D. Apl 25 2-657 Judge Davis

Cotton Cases Intermingled Cotton Cases

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 908.

THE UNITED STATES, APPELLANTS,

vs.

JOHN B. RAYMOND, ASSIGNEE IN BANKRUPTCY OF J. W. MAYBIN.

APPEAL FROM THE COURT OF CLAIMS.

FILED JANUARY 24, 1876.

Affirm —

SUPREME COURT OF THE UNITED STATES.

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1. United States Court of Claims, December term, A. D. 1867.

DR. J. W. MAYBIN
vs.
THE UNITED STATES. } 3400. Petition filed Aug. 13, 1868.

To the honorable the United States Court of Claims:

The petition of Dr. J. W. Maybin, a citizen of the United States, now residing on his plantation in the county of Warren and State of Mississippi, showeth:

That in the spring of the year 1863 he was the owner of four hundred and two bales of cotton, which was then in his possession on said plantation; that on or about the 22d day of May, 1863, said cotton was seized by the forces under command of General Blair, by his order, and carried in United States Government wagons to Hayne's Bluff, on the Yazoo River, from which place, as your petitioner believes, it was sent to the Treasury agent at Cincinnati, Ohio, where it was sold, and the proceeds paid into the Treasury of the United States; that said cotton was bailed and ginned at the time it was taken; that it averaged in weight 400 pounds per bale; and that no part of the same, or the proceeds thereof, was appropriated to the use of the Army or Navy of the United States.

Your petitioner avers that he is unable to state the precise amount for which said cotton was sold, or the expenses attending the seizure, transportation, shipment, and sale thereof, but he states, on information and belief, that said cotton has netted eighty thousand dollars, and this amount, as net proceeds, was paid into the Treasury.

2 Your petitioner further avers that his said cotton was never abandoned or forfeited, or liable to seizure, under any act of Congress in that behalf provided, and that it was not liable to seizure under the laws and usages of war, and that no proceedings for the purpose of condemning said cotton have ever been instituted before any court or tribunal.

Your petitioner further states that his property aforesaid having been taken possession of by the United States Government and appropriated by it, an implied contract has arisen to make your petitioner just compensation therefor, by paying him all said cotton was reasonably worth at the time and place it was so taken from him as aforesaid; and he avers that said cotton was worth at the time of its seizure ninety-five thousand dollars, which, under the implied contract aforesaid, he is entitled to receive from the United States.

Your petitioner further avers that, if there has been a lawful and valid capture of said cotton, which he denies, but which he understands is asserted by the United States, then he is, nevertheless, entitled to receive the net proceeds thereof, amounting, as aforesaid, to the sum first above named, of eighty thousand dollars, under the provisions of an act of Congress approved March 12, 1863, entitled "An act to provide for the collection of abandoned property, and for the prevention of frauds in insurrectionary districts in the United States."

Your petitioner further avers that, at the time said cotton was taken from his possession, and from his plantation where he resided, the said plantation and the country adjacent thereto were under the control and within the limits of the Army of the United States.

Your petitioner alleges that he has always been a loyal citizen of the United States, and never voluntarily encouraged, or abetted, or gave aid and comfort to the rebellion or to the enemies of the Government of

the United States, but, on the contrary, he has always borne true allegiance to said Government.

J. W. MAYBIN,
By B. D. WHITNEY,
Attorney in Fact.

3 I, B. D. Whitney, of Washington, D. C., attorney in fact of J. W. Maybin, petitioner as aforesaid, on oath depose and say that no assignment or transfer of said claim, or any part thereof, or any interest therein, has been made; that said claimant is justly entitled to the amount claimed from the United States, and that I believe the facts as stated in said petition are true.

B. D. WHITNEY.

DISTRICT OF COLUMBIA,
County of Washington:

Personally appeared the above-named B. D. Whitney, and made oath that the above declaration by him subscribed is true, according to the best of his knowledge and belief.

Before me, this 11th day of August, 1868.

EDM. F. BROWN,
A Commissioner of the Court of Claims.

C. CUSHING,
Petitioner's Counsel, Washington, D. C.

4 In the United States Court of Claims, December term, A. D. 1868.

J. W. MAYBEN
vs.
THE UNITED STATES. } No. 3400.

And the said defendants, by their Attorney-General, come and make answer to the petition of the claimant on file herein; and, not confessing the same, or any part thereof, do hereby most expressly deny each and every the allegations therein contained, and call for strict proof of the same.

And as to so much of said petition as sets forth and avers that the United States are indebted to said claimant in the sum of eighty thousand dollars the defendants say that they are not indebted to said claimant in said sum of money, nor any part thereof.

And as to so much of said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and never voluntarily aided, abetted, or given encouragement to rebellion against said Government, the said defendants deny the truth of said allegation, and call for proof thereof.

T. LYLE DICKEY,
Assistant Attorney-General.

Filed July 19, 1869.

5 In the United States Court of Claims.

JOHN B. RAYMOND, ASSIGNEE IN BANKRUPTCY of Joseph W. Maybin,
vs.
THE UNITED STATES. } No. 3400.

Motion.

The claimant, John B. Raymond, of the city of Jackson, in the State of Mississippi, respectfully represents that he has been duly appointed

and qualified as assignee in bankruptcy by the United States district court for the southern district of Mississippi, of the estate of Joseph W. Maybin.

Wherefore the said John B. Raymond prays that his petition, and the exhibits thereto attached, showing such appointment, may be filed herein, and that the full rights of said assignee may be considered by this court, and the future proceedings in this case conducted in
6 the name of John B. Raymond, as said assignee, and that all moneys awarded herein may be paid to this claimant.

JOHN B. RAYMOND,
Assignee of Joseph W. Maybin, Claimant.
By S. E. JENNER AND ADAM & SPEED,
Atty. for Claimant.

Filed April 2, 1873.

JOSEPH W. MAYBIN
vs.
THE UNITED STATES. } No. 3400.

MAY 26, 1873.—The motion filed April 2, 1873, to substitute John B Raymond, assignee in bankruptcy of Joseph W. Maybin, as claimant, was allowed.

By the court.

7 In the United States Court of Claims.

JOHN B. RAYMOND, ASSIGNEE OF J. W. Maybin,
vs.
THE UNITED STATES. } No. 3400. Filed April 2, 1873.

To the honorable the Court of Claims:

The petition of John B. Raymond, of the city of Jackson, in the State of Mississippi, respectfully shows:

That J. W. Maybin, the claimant in the above-entitled cause, now pending before this honorable court, was, on the 16th day of February, A. D. 1869, adjudicated a bankrupt by the district court of the United States for the southern district of Mississippi, as will more fully appear by the copy of said adjudication duly certified by the clerk of said court under the seal thereof, filed herewith, marked "Exhibit A," and prayed to be taken as a part of this petition.

8 That on the 18th day of November, A. D. 1869, your petitioner was duly appointed by said court and qualified as the assignee in bankruptcy of said bankrupt, said J. W. Maybin, and thereupon George C. McKee, esq., one of the registers in bankruptcy of said court, did, by an instrument in writing under his hand, assign and convey to your petitioner, as assignee aforesaid, all the estate, real and personal, of the said J. W. Maybin, bankrupt, whereby the title to his said estate vested in your petitioner, as will more fully appear by the copy of said assignment, duly certified by the clerk of said court, under the seal thereof, filed herewith, marked "Exhibit B," and prayed to be taken as a part of this petition.

That among other property so vesting in your petitioner, as assignee of said bankrupt, was the right of action then had against the United States for the taking of the cotton by the United States mentioned
9 in the petition of said Maybin, in the said pending suit in this court,

of the value of which said cotton the said bankrupt claims restitution by the United States, and your petitioner is entitled to prosecute this suit in his own name, as the assignee of said bankrupt, in the same manner and with like effect as it might be prosecuted by said bankrupt.

Your petitioner therefore prays that he be substituted as the claimant in this suit in place of said bankrupt, and the same revived in his name as assignee of said bankrupt, and that on the final decree in this cause he be decreed to receive whatever may be awarded as due upon said claim against the United States.

JNO. B. RAYMOND.

10 UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

John B. Raymond, being duly sworn, says that he is the petitioner named in the foregoing petition, and who signed the same; that the matters therein stated are true of his own knowledge, except as to those matters which are stated on information and belief, and as to those matters he believes them to be true.

JNO. B. RAYMOND.

Sworn to and subscribed in my presence at the city of Jackson, in said district, this the 27th day of March, A. D. 1873.

[COMMISSIONER'S SEAL.] GEORGE T. SWANN,
Commissioner of the United States for the Southern District of Mississippi.

11 *Exhibit A.*

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF JOSEPH W. MAYBIN. } In bankruptcy.

By whom a petition for adjudication of bankruptcy was filed on the 30th day of December, A. D. 1868, at Jackson, in said district, on the 16th day of February, 1869, before me, Geo. C. McKee, one of the registers in bankruptcy in said court.

I, the undersigned, a register of said court in bankruptcy, upon good proof before me, Geo. C. McKee, do find that the said Joseph W. Maybin has become a bankrupt within the true intent and meaning of the act of Congress entitled "An act to establish a uniform system of bankruptcy throughout the United States," approved March 2nd, 1867; and I do hereby declare and adjudge him a bankrupt accordingly.

GEO. C. McKEE,
Register in Bankruptcy.

12 *Exhibit B*

In the district court of the United States for the southern district of Mississippi.

IN THE MATTER OF JOSEPH W. MAYBIN, BANKRUPT. } In bankruptcy.

Southern District of Mississippi, ss:

Know all men by these presents that John B. Raymond, of the city of Vicksburg, in the county of Warren, and State of Mississippi, in said district, has been duly appointed assignee of the estate of Joseph W. Maybin in said matter.

Now, therefore, I, Geo. C. McKee, register in bankruptcy of the fourth congressional district of Mississippi, by virtue of the authority vested in me by the 14th section of an act of Congress entitled "An act to

establish a uniform system of bankruptcy throughout the United States," approved March 2, 1867, do hereby convey and assign to the said
13 John B. Raymond, assignee, as aforesaid, all the estate, real and personal, of the said Joseph W. Maybin, bankrupt aforesaid, including all the property, of whatever kind, of which he is possessed, or in which he was interested, or entitled to have on the 30th day of December, A. D. 1868, with all his deeds, books, and papers relating thereto, excepting such property as is exempted from the operation of this assignment by the provisions of said 14th section of said act: to have and to hold all the foregoing premises to the said John B. Raymond and his heirs forever; in trust, nevertheless, for the use and purposes, with the powers, and subject to the conditions and limitations set forth in said act.

In testimony whereof, I, Geo. C. McKee, register, have hereunto set my hand, and caused the seal of said court to be affixed, this 13th day of December, A. D. 1869.

[SEAL.] GEO. C. McKEE,
Register in Bankruptcy.

14 UNITED STATES OF AMERICA,
Southern District of Mississippi, ss:

I, George T. Swann, clerk of the district court of the United States for said district, hereby certify that the foregoing and annexed pages 1 and 2 contain a full and true copy of the register's deed of assignment, and of the adjudication of bankruptcy in said court, in the matter of Joseph W. Maybin, No. 1234, as the same appears of record therein.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Jackson, in said district, this 24th day of March, A. D. 1873.

[SEAL.] GEO. T. SWANN, *Clerk.*

15 In the Court of Claims.

JOHN B. RAYMOND, ASSIGNEE IN BANKRUPTCY of J. W. Mayben,
vs.
THE UNITED STATES. } 3400.

At a Court of Claims held at the Capitol in the city of Washington, the 24th day of May, A. D. 1875, judgment was ordered to be entered up as follows:

The court, upon due consideration of the premises, find in favor of the claimant, and do order, adjudge, and decree that the said John B. Raymond, assignee in bankruptcy of J. W. Mayben, do have and recover of and from the United States the sum of seventy-one thousand and twenty dollars, ($71,020.00,) being the net proceeds of 400 bales of cotton at $177.55 per bale.

By the court.

A true copy of record.

16 In the Court of Claims of the United States, Dec. term, 1874.

JOHN B. RAYMOND, ASSIGNEE IN BANKRUPTCY of J. W. Mayben,
vs.
THE UNITED STATES. } No. 3400.

From the judgment rendered in the above-entitled cause on May 24, 1875, in favor of claimant, the defendants, by their Attorney-General,

on the 8th day of July, 1875, make application for, and give notice of, an appeal to the Supreme Court of the United States.

THOMAS SIMONS,
Assistant Attorney-General.

Filed August 19, 1875.
At chambers.
Allowed:

C. D. DRAKE, *C. J.*

17 United States Court of Claims.

SUNDRY COTTON-CASES.

Order of the court, made May 24, 1875.

On the motions to confirm the reports of Special Commissioner Eveleth, bearing date, respectively, the 2d day of March, 1875, and the 6th day of April, 1875, and the 21st day of April, 1875, after hearing counsel for the respective claimants and for the defendants, and after due consideration of the evidence offered in all of such cases—

It is ordered and directed that the said reports be, and are hereby, amended in the following particulars:

1. The first fund, consisting of Vicksburgh and Natchez cotton, intermingled so that the identity thereof has been destroyed, as described in the report, will stand at the sum of $948,313.30. The number of bales contributed to this fund by capture, and which it represents, will stand at 5,341 bales, and the price per bale which parties should recover will stand at $177.55 per bale.

The cases of—
James J. Persons, assignee, vs. The United States, (No. 3372,)
Daniel J. Dohan vs. Same, (No. 3557,)
Eliza A. Cochran vs. Same, (No. 3508,)
William E. Hall vs. Same, (No. 3423,)
Mary E. Bledsoe, guardian, vs. Same, (No. 3477,)
Martha Crane vs. Same, (No. 3554,)
are stricken out of the report and remanded to the general docket, with leave to both parties, claimant and defendant, to take further evidence, but upon condition that if any of the cases hereafter be brought to trial, and the claimant recovers out of the funds set forth in the report, the claimant, before judgment, shall pay to the commissioner his fees and expenses at the rate hereinafter prescribed for claimants whose cases are now prosecuted to judgment.

The cases of—
A. Perryman vs. The United States, (No. 3231,)
Anson Wolcott vs. Same, (No. 3345,)
Susan Bolls vs. Same, (No. 3193,)
Mrs. V. O. West vs. Same, (No. 3198,)
Sylvia A. Perry vs. Same, (No. 3255,)
T. C. A. Dexter vs. Same, (3465,)
are remanded to the commissioner, but on condition that if it hereafter appear that they are entitled to relief out of the two funds now disposed of, the petitions shall be dismissed and they are stricken out of this report.

In the cases of—
James A. Fox vs. The United States, (No. 3236,)
Jesse B. Ferguson vs. Same, (No. 3258,)
E. H. Pace vs. Same, (No. 3468,)
John Harod vs. Same, (No. 3472,)

Mrs. A. Smith vs. Same, (No. 3178,)
J. E. Fore vs. Same, (No. 3256,)
Joseph C. Jones vs. Same, (No. 3504,)
18 Cornelius T. Cunningham vs. Same, (No. 3370,)
Solomon Galinger vs. Same, (No. 3440,)
the report of the commissioner is confirmed, and judgment will be entered dismissing the petitions of the respective claimants.

In the case of Mrs. Nanette Switzer, (late Abell,) vs. The United States, (No. 3169,) the report of the commissioner is confirmed as to 73 bales of the cotton claimed, and the remaining 27 are found on the evidence to have been the property of the confederate government at the time of capture, and are now adjudged to be the property of the United States.

In the case of James A. Hutchinson vs. The United States, (No. 3499,) the report of the commissioner is confirmed as to 42 bales of the cotton claimed, and the remaining 23 bales are found on the evidence to have been the property of the confederate government at the time of capture, and are adjudged to be the property of the United States.

In the case of Joel H. Willis's administrator vs. The United States, (No. 3186,) the report of the commissioner is not confirmed, and the claimant is found on the evidence not to have proved the capture of the cotton sought to be recovered, and judgment will be entered dismissing the petition.

In the case of Seth H. Kellogg vs. The United States, (No. 3229,) the report is not confirmed as to the title of the claimant to the cotton sought to be recovered, and the evidence relied upon by the commissioner is excluded as incompetent. The case will be remanded to the general docket, with leave to the parties to give further evidence as to the title of the claimant and his vendors, John Buckingham & Co., to the cotton in suit, upon condition that, if the case be hereafter brought to trial, the claimant shall before judgment pay to the commissioner his fees and expenses at the rate hereinafter provided.

And it is further ordered that in the following cases the report of the commissioner be confirmed and judgment be entered in favor of the respective claimants for the quantity of cotton reported by the commissioner at the rates fixed by the foregoing amendments to his report:

FIRST FUND, AT $177.55 PER BALE.

Robert G. Johnson vs. The United States, (No. 2539,) 149 bales.
Ellen D. Balcheldor vs. Same, (No. 3150,) 51 bales.
John H. Newman vs. Same, (No. 3162,) 50 bales.
E. K. McLean vs. Same, (No. 3170,) 21 bales.
Thomas Y. Berry, administrator, vs. Same, (No. 3171,) 149 bales.
Juliet Glass vs. Same, (No. 3174,) 18 bales.
J. Reese Cook vs. Same, (No. 3175,) 40 bales.
Thomas A. Marshall vs. Same, (No. 3176,) 22 bales.
Richard Taylor vs. Same, (No. 3179,) 6 bales.
Thomas Kidd, guardian, vs. Same, (No. 3182,) 64 bales.
James Stewart vs. Same, (No. 3183,) 70 bales.
Charlotte Spear vs. Same, (No. 3184,) 70 bales.
Mary P. Marye's administrator vs. Same, (No. 3188,) 45 bales.
Thomas Kidd vs. Same, (No. 3191,) 480 bales.
Hiram Harrison vs. Same, (No. 3192,) 200 bales.
Duff Green vs. Same, (No. 3194,) 19 bales.
J. B. Brabston vs. Same, (No. 3196,) 32 bales.
Sarah Cowan vs. Same, (No. 3197,) 48 bales.
E. B. Willis vs. Same, (No. 3199,) 40 bales.

Emma J. Jones vs. Same, (No. 3293,) 100 bales.
Henry Bodenheim vs. Same, (Nos. 3354 & 3480,) 90 bales.
19 Alfred W. Brien vs. Same, (No. 3393,) 40 bales.
John L. Hebron's assignee vs. Same, (No. 3399,) 30 bales.
J. W. Maybin's assignee vs. Same, (No. 3400,) 400 bales.
Armstead Burwell vs. Same, (No. 3419,) 118 bales.
John Willis vs. Same, (No. 3421,) 125 bales.
Wm. E. Hall vs. Same, (No. 3424,) 300 bales.
James Meagher vs. Same, (3439,) 69 bales; and for 45 bales specifically traced, $14,759.90.
Mary W. Thomas vs. Same, (No. 3466,) 112 bales.
Thomas H. Jett vs. Same, (No. 3470,) 25 bales.
George Hawkins vs. Same, (No. 3473,) 15 bales.
James J. Cowan, administrator, vs. Same, (No. 3474,) 120 bales.
Benjamin Harwood vs. Same, (No. 3498,) 75 bales.
Ann Maria Ragsdale vs. Same, (No. 3501,) 100 bales.
Alexander Hutchinson vs. Same, (No. 3510,) 130 bales.
John R. McAlpine vs. Same, (No. 3511,) 100 bales.
Isaac R. Wade vs. Same, (No. 3545,) 21 bales.
Clarissa Young vs. Same, (No. 3550,) 116 bales.
Ann Eliza Routh vs. Same, (No. 3413,) 75 bales.

THIRD FUND, AT $111.97.

E. E. Mount, administratrix, vs. The United States, (No. 3165,) 5 bales.
Frederick A. Metcalf, administrator, vs. Same, (No. 3539,) 55 bales.
Robert M. Douglas et al. vs. Same, (No. 9740,) 1,457 bales.
Wm. F. Smith vs. Same, (No. 3486,) 15 bales.

And it is further ordered that the engrossed and consolidated copy of the reports of the commissioner as amended by this order, filed herewith, stand as the findings of fact of the court.

And it is further ordered that there be allowed and paid to the commissioner by the several parties for whom judgment is now directed, for his fees and expenses, including those of Enoch Totten, esq., his legal assistant, the sum of $6,000, to be apportioned pro rata among the said several claimants, according to the amounts of their respective judgments as hereby directed. That $2,000 of said allowance be paid by the commissioner to his said assistant, Enoch Totten, esq., and that the entry of judgment in each case will be suspended until the claimant produces the commissioner's receipt for the party's ratable share of the allowance to the commissioner.

By the court.

20 JOHN B. RAYMOND, ASSIGNEE IN BANKRUPTCY OF J. W. MAYBIN, *vs.* THE UNITED STATES. } 3400.

Findings of fact and conclusions of law.

CONSOLIDATED REPORT OF SPECIAL COMMISSIONER.

In pursuance of the order of this court, dated on the 4th day of June, 1873, appointing me a special commissioner for certain purposes therein set forth, I submit the above-entitled causes and the following report, embracing transactions in regard to cotton captured in the State of Mississippi during the years 1863, 1864, and 1865, the records not exhibiting any captured in the year 1862.

During the years 1863, 1864, and 1865, fourteen thousand three hun-

dred and thirty-five (14,335) bales of cotton were captured and taken from the owners in the State of Mississippi. The parcels of different owners were, except as hereinafter specifically stated, so that the identity of each parcel was destroyed and the property of each owner could not be traced. While in transitu large quantities were stolen, destroyed, taken for military purposes, and otherwise lost from the mass. The remainder, amounting to twelve thousand seven hundred and twenty-two, (12,722) has been accounted for in the accounts rendered by William P. Mellen, supervising special agent of the Treasury Department, and by Captains A. R. Eddy and G. L. Fort, officers of the Quartermaster's Department, viz:

		Bales.
Mr. Mellen's accounts		9,664
Captain Eddy's accounts		947
Captain Fort's accounts		2,111
In all		12,722
Of which there were released in kind to various persons	2,100	
There were burned, lost, or otherwise disposed of, as is shown in a tabulated statement marked Exhibit No. 1, and appended hereto	259	
		2,359
And the number of bales sold is:		
By Mr. Mellen	7,439	
By Captain Eddy	813	
By Captain Fort	2,111	
		10,363
Out of the above proceeds there were nominally released, as hereinafter stated, by the officers of the United States to various persons claiming to have been the owners of some of the cotton sold	1,497	
The number of which the net proceeds were paid for collecting portions of the cotton sold, is	139¾	
The number included in judgments entered in the United States Court of Claims, is	2,702	
		4,338¾
And the number, the net proceeds of which, including custom-house fees and internal-revenue tax, remain available to meet judgments of the Court of Claims, is		6,024¼

The proceeds derived from the 10,363 bales sold are—				
By Mr. Mellen	7,439	"		$2,295,933 66
By Captain Eddy	813	"		247,143 08
By Captain Fort	2,111	"		429,663 39
	10,363			2,972,740 13

The expenses charged against the same are—

By Mr. Mellen:			
Freight, &c	$207,346 44		
Custom-house fees	117,862 93		
Internal-revenue tax	26,746 24		
		$351,955 61	
By Captain Eddy:			
Auctioneer's fees, &c		2,842 41	

By the Treasury Department, as properly chargeable against proceeds of the sale by Captain Fort:		
Freight..... $16,888 00		
Int. rev. tax... 2,315 46		
	19,203 46	
Of which the amount remitted on payment of judgments in the Court of Claims is:		
21 In favor of Samuel Worthington's administratrix $8,331 29		
In favor of Wm. W. Worthington 2,272 17		
	10,603 46	
Leaving as chargeable against the proceeds of the sale of 1,075 of the 2,111 bales sold..	8,600 00	
		363,398 02
The net proceeds in which charges for custom-house fees and internal-revenue tax are included are.....		2,609 342 11
And the like proceeds in which these charges are excluded are.....		$2,753,951 28
From out of such net proceeds officers of the United States have paid and there is otherwise involved—		
1. To various persons claiming to be owners of cotton so sold, the proceeds of 1,497 bales, amounting to.....	$408,200 80	
2. To various persons for collecting portions of the cotton sold.....	30,825 72	
3. Involved in appeal pending in the United States Supreme Court in the Elgee case.....	16,309 08	
4. The net proceeds due to 2,702 bales and involved in judgments entered in the United States Court of Claims amounts to	888,487 35	
5. The net proceeds due to 45 bales specifically traced are	14,759 90	
		1,358,582 85
And the balance in the Treasury available to payment of judgments in the Court of Claims is		1,395,368 43

By reference to said tabulated statement, marked "Exhibit No. 1," the above facts will be seen fully set out.

As to the 1,497 bales nominally released to the owners, the following facts are found: At various times after the sales of cotton and while the proceeds were on deposit with the Assistant Treasurer of the United States, at Cincinnati, and were subject to the draft or order of the supervising special agent of the Treasury, persons would appear claiming to have been the owners of some of the cotton which had been sold, and produce affidavits to prove their title. On being satisfied of their loyalty, the Secretary of the Treasury would direct the supervising special agent to release to the applicant the proceeds of a specified num-

ber of bales, deducting therefrom the custom-house fees and internal-revenue tax. The special agent would thereupon pay to the applicant out of the moneys subject to his draft, as before stated, the amount which he supposed represented the avails of the applicant's cotton, deducting, however, the custom-house fees and internal-revenue tax. But in making these estimates the special agent did not take into account the losses to which the mass of cotton had been subjected before it came into his hands. Consequently, while he nominally released the proceeds of a given number of bales, less the custom-house fees and internal-revenue tax, he really released the proceeds of a much larger number. Therefore, after the custom-house fees and internal-revenue tax had been deducted, there was released as representing 1,497 bales, the sum of four hundred and seven thousand six hundred and eighty-eight dollars and seven cents, ($407,688.07,) as above shown, giving an average of $272.33 per bale.

To arrange the cotton referred to, and the corresponding proceeds into funds, is a task of no little delicacy. There is so much uncertainty connected with the facts, and the various lots are so confused and intermingled, that it is only possible to approximate, and we are compelled to grope in the dark and separate the cotton into funds with such imperfect lights as we have before us. I have divided the cotton captured in Mississippi into eight separate funds, and in so doing have taken the cotton remaining on hand, only.

The cotton paid out for collecting, burned or lost, and released in kind, or in net proceeds, has been excluded from the various funds; but the cotton disposed of by the court has been included in the fund, except the cotton in controversy in the case of Woodruff, Bouchard & Elgee, and the funds arising therefrom. This case being undecided, on appeal, the property has been excluded from the funds.

In cases where the net proceeds of cotton were released by the Treasury agents to persons claiming to own them, the amounts assessed for custom-house fees and internal-revenue taxes were always retained by the Government. In this report such sums, so retained, have been considered and counted as a part of the fund.

22 FIRST FUND.

The most of the cotton included in this report was captured in the vicinity of Vicksburgh, Mississippi, and was transported to that city. From there it was shipped generally to Memphis, Tennessee, and thence to Saint Louis and Cincinnati, for sale.

The collection of cotton in that locality began in June, 1863, about the time the Army surrounded the city of Vicksburgh, and continued until about July, 1865. A very large quantity of captured cotton was used by the Army of the United States for defensive purposes in the vicinity of Vicksburgh. After the surrender of Vicksburgh, this cotton, or as much of it as could be saved, was collected and transported to Vicksburgh. The work of gathering cotton from the defenses around Vicksburgh continued until about the 1st of November, 1863, and after that date small quantities were received, and even as late as March, 1864, a few bales were dug out and brought in from those defenses.

The testimony shows that, during the strife in the counties surrounding Vicksburgh, the people were in the habit of concealing their cotton in swamps and forests to protect it from the torches of the confederates, and also from the hands of the Union Army. During the latter part of the year 1863, and during the year 1864, much of this concealed cotton was discovered by the military forces of the United States, and by the

Treasury officials, and was seized and conveyed by them to Vicksburgh and to Natchez.

Neither the records of the Department, nor the depositions of witnesses filed in the various cases, enable me to determine how long the various lots of cotton remained in Vicksburgh before shipment to the North for sale. But I find that large masses of cotton were stored in warehouses and piled up on wharves in Vicksburgh for indefinite periods of time, and I am led to the belief that large quantities of cotton were retained in Vicksburgh many months before shipment to Memphis, Saint Louis, and Cincinnati.

I find that a large quantity of cotton was, immediately after seizure, sent to Natchez, but the greater part if not all of such cotton was reshipped, sooner or later, to Vicksburgh; at this point it was intermingled with the mass of cotton accumulated in that city, except as to lot 121, hereinafter mentioned.

I have, therefore, arranged the cotton shipped from Vicksburgh and Natchez, during the years 1863 and 1864, into one fund, and have called it the first fund, to answer to claims for cotton seized and sent to those two points during those two years. Two expeditions were sent up the Yazoo River, one in 1863, under General Herron's command, and the other in 1864, under the command of Colonel Coates. Both of these expeditions captured cotton, which was shipped down the Yazoo River to Vicksburgh, and I have, therefore, included it in the fund under consideration.

A small lot of cotton, consisting of fifteen bales, was brought to Memphis, by a steamboat, in August, 1863; of these, twelve bales were saved from burning at Perkins's Landing, and three picked up in the Yazoo River. This cotton undoubtedly was the property of the people residing in the vicinity of Vicksburgh, who contributed to cotton which forms the first fund, and I have, therefore, assigned the lot to said fund.

Some of the cotton captured in the vicinity of the railroad bridge over the Big Black River, in June, 1863, was conveyed on wagon-trains to Haines's Bluff; such cotton, I think, eventually went into Vicksburgh, and I have, therefore, included it in the first fund.

In every case where the evidence shows the seizure of cotton, and the shipment thereof to Vicksburgh or Natchez, during the years 1863 and 1864, I have recommended the payment of the allowance out of this fund. All of the cotton allowed to claimants out of this fund, except in two cases, was captured on and before the 1st day of March, 1864. In the two cases so excepted, the cotton was captured in July and September, 1864. In view of the great uncertainty as to the time of shipment from Vicksburgh, and the impossibility of tracing the cotton of the various claimants into specified lots, I deem this to be the only just method of distributing the fund.

I have prepared and filed herewith a paper, marked "Exhibit No. 2," showing the lots of cotton put into the first fund, the date of shipment, the judgments of the court, and the number of bales remaining available; to which reference is made.

After deducting the amounts recovered in judgments of the court heretofore rendered, and the amount released by the Treasury, there will remain a balance in the Treasury derived from cotton, which has been segregated as belonging to the first fund, amounting to $948,313.30, and this is designated for the purposes of this report as the first fund. The number of bales segregated as above and represented by this fund is 5,341, giving as the price per bale which should be recovered by claimants, $177.55.

23 FIRST FUND.

From the first fund must be deducted the following judgments of the Court of Claims, and also the amount specifically traced in favor of James Meagher, that is to say:

Judgments:			
Michael Slattery	1	bale	$320 55
John A. Kline, administrator	560	bales	125,300 00
Clarissa Ashford	83	bales	23,589 43
Warren R. Dent	75	bales	17,923 90
Woodruff, Bouchard and Elgee	572	bales	366,170 83
J. W. Vick	17	bales	1,356 10
Thomas P. Rubey	8	bales	1,210 48
J. B. Christian's administrator	20	bales	7,685 75
Benj. Rouch's executor	69	bales	8,907 69
	1,405		552,464 73
Specifically traced and allowed to James Meagher	45	bales	14,759 90
Loss to this fund from custom-house fees and internal-revenue tax, lot 136			512 73
	1,450		567,737 36
Whole number of bales allotted to this fund	5,078¼		1,516,050 66
Deduct judgments as above, special allowance to Meagher, and loss to fund	1,450		567,737 36
Available	3,628¼	bales	948,313 30

DR. J. W. MAYBIN *vs.* THE UNITED STATES. } No. 3400.

This action was brought to recover the proceeds of four hundred and two bales of cotton.

The evidence shows that, in the month of May or June, 1863, the military forces of the United States seized and carried away from the plaintiff's plantation in Warren County, Mississippi, four hundred bales of cotton; that the same was the property of the claimant, and that it was conveyed in army-wagons to Hayne's Bluff, where it was loaded on vessels on the river.

This cotton cannot be traced beyond this point, and probably became intermingled with the mass of cotton at Vicksburgh.

The claimant is entitled to judgment for four hundred bales of cotton at the average rate per bale, payable out of the first fund.

400 bales of cotton, at $177.55 per bale $71,020 00

Respectfully submitted to the honorable Court of Claims by—

E. EVELETH,
Commissioner.

WASHINGTON, D. C., *March* 2, 1875.

24 *Exhibit No. 1, referred*

General account or recapitulation relative to captured or abandoned cotton derived from the Wm. P. Mellen, sup. spec'l agent Treasury Department, and by Captains A. R.

Accounts referred to.		Received.		Lost or stolen.	Transferred for hospital purposes.	Burned at depot near Vicksburg.	How disposed of not specifically traced.	Released in kind.					
No.	County, &c.	Bales.	Parts.					Bales.	Parts.	Pounds.	Gross proceeds.	Charges.	
	Warren	944	..	..	..	..	..	944	..	345,038	212,655	72	31,315 79
	Hinds	216	..	..	..	..	..	88	..	36,070	12,336	46	2,227 80
	Tishamingo	124	13	..	..	..	..	124	13	57,951	26,716	99	2,485 65
	Bolivar	916	2	..	..	..	..	748 & 2 parts.	168	..	66,709	31,061	08 5,155 88
	Yazoo	1,827	6	..	..	..	..	1,827	6	859,383	459,228	10	54,219 43
	Holmes	16	..	..	..	..	..	16	..	6,106	2,450	87	559 42
	Adams	319	..	..	1	1	..	317	..	130,387	127,651	85	16,008 66
	Claiborne	266	..	..	..	..	..	266	..	104,413	56,812	28	10,946 23
	Issaquena	205	..	..	..	..	..	111	..	44,604	33,661	84	4,661 89
	Washington	125	..	..	..	..	..	125	..	47,805	22,196	42	5,450 53
	Tunica	51	..	..	..	..	..	51	..	22,765	12,784	08	2,060 07
	Jefferson	100	..	..	..	..	..	100	..	40,052	27,240	40	4,142 91
	Coahoma	809	24	..	..	..	..	372	24	186,357	151,426	37	17,071 75
	Wilkinson	582	..	..	..	..	..	582	..	276,458	479,340	75	107,162 29
	Without specific information necessary to determine the county from which taken	3,164	5	1	23	82	151	624	2,283	5	831,211	640,370	45 88,487 31
		9,664	50	1	24	83	151	1,966 & 2 parts.	7,439	48	3,055,309	2,295,933	66 351,955 61
First..	To which add the following: Cotton taken to Memphis, Tennessee, on the 5th of April, 1863, on the steamboat "Empress," and understood to be the same lot of cotton seized by Capt. E. D. Osband, 4th Illinois Cavalry, (bales) 2,180 Less sixty-nine bales transferred by Capt. Fort to Thos. H. Yeatman, Treas'y agt. at Memphis, and by him to W. P. Mellen..... 69												
	Per acct. herewith marked G. L. F	2,111	..	..	..	..	..	..	2,111	..	..	429,663	39 8,600 00
Second	Sales by Capt. A. R. Eddy per acct. herewith marked A. R. E	974	..	..	..	..	..	134	813	..	..	247,143	08 2,842 41
		12,722	50	1	24	83	151	2,100 & 2 parts.	10,363	48	3,055,309	2,972,740	13 363,398 02

to in report.

State of Mississippi, proceeds of sales of which are accounted for in accounts rendered by Eddy and G. L. Fort, officers of the Quartermaster's Department, U. S. Army.

Net proceeds.	Released in net proceeds.		Paid for collecting.		Judgments in Court of Claims.		Remaining available.			
							Quantity.		Net proceeds including C. H. fees and int. rev. tax.	Net proceeds excluding C. H. fees and int. rev. tax.
	Amount.	Due to bales.	Amount.	Due to bales.	Amount.	Bales.	Bales.	Parts.		
181, 339 93	20, 693 67	129	8, 233 80	39¾	125, 620 55	561	214¼	...	26, 791 91	42, 284 64
10, 108 66	.....	.....	.....	....	.....	.....	88	...	10, 108 66	10, 830 08
24, 231 34	.....	.....	.....	....	.....	.....	124	13	24, 231 34	25, 457 44
25, 905 20	25, 905 20	16c	.....	....	.....	.....	.....	...	.....	3, 001 91
405, 008 67	41, 363 58	176	.....	....	.....	.....	1, 651	6	363, 645 09	401, 174 26
1, 891 45	.....	.....	.....	....	.....	.....	16	...	1, 891 45	2, 013 07
111, 643 19	75, 877 74	159	6, 725 25	31	.....	.....	127	...	29, 040 20	35, 986 46
45, 866 05	8, 558 56	72	7, 440 35	31¾	.....	.....	162¼	...	29, 867 14	34, 094 83
28, 999 95	23, 896 83	91	.....	....	.....	.....	20	...	5, 103 12	7, 277 67
16, 745 89	1, 663 45	7	.....	....	1, 356 10	17	101	...	13, 726 34	16, 076 58
10, 724 01	9, 208 54	41	.....	....	.....	.....	10	...	1, 515 47	2, 545 79
23, 097 49	.....	.....	5, 173 59	25	17, 923 90	75	.....	...	.....	.....
134, 354 62	128, 478 02	415 & 2 parts.	.....	....	.....	.....	22	11	5, 876 60	15, 242 67
372, 178 46	.....	.....	.....	....	366, 170 83	572	10	...	6, 007 63	6, 286 03
551, 883 14	72, 042 48	239	3, 252 73	12½	23, 589 43	83	1, 948¼	5	452, 998 50	496, 832 09
1, 943, 978 05	407, 688 07	1, 497 & 2 parts.	30, 825 72	139½	534, 660 81	1, 308	4, 494¼	35	970, 803 45	1, 099, 103 54
421, 063 39	.....	.....	.....	....	210, 850 42	1, 036	1, 075	...	210, 212 97	210, 212 97
244, 300 67	.....	.....	.....	....	125, 172 20	358	455	...	119, 128 47	119, 128 47
2, 609, 342 11	407, 688 07	1, 497 & 2 parts.	30, 825 72	139½	870, 683 43	2, 702	6, 024¼	35	1, 300, 144 89	1, 428, 444 93

25 *Exhibit No. 2, with second report of special commissioner.*

FIRST FUND.

Cotton shipped from Vicksburgh and Natchez during the years 1863 *and* 1864, *and from Haines's Bluff and Perkins's Landing, in August,* 1863.

Lot.	Shipped. From—	To—	When.	Bales.		Amount available.
			1863.			
92	Vicksburg	St. Louis	July	46	.....	$8,501 62
109	"	Memphis	" 30	184	.....	4,624 64
				666	.....	164,458 00
				5 parts	.....	.....
G.		St. Louis	August	507 &	.....	123,678 24
				61	.....	3,548 71
					.....	15,566 19
				10	.....	2,009 43
108	Haine's Bluff	Memphis	" 6		.....	1,754 51
120	Vicksburgh	St. Louis	"	284	.....	78,702 81
118	Perkins' Landing	Memphis	" 20	15	.....	3,279 22
N. U. S. R.	Vicksburg	St. Louis	" 30	100½	.....	22,844 84
121	"	Memphis	" 31	1,362	.....	387,095 25
151						
146	"	Cinn. & St. Louis	" 31	.....	.....	3,884 95
V. 6						
147	"	"	" "	45	.....	14,759 90
145	"	"	" "	.....	.....	671 63
144	"	"	" "	23	.....	6,785 06
V. 9	"	"	" "	37	.....	7,921 34
V. 1	"	St. Louis	Sept. 4	68	.....	8,301 73
140	"	"	" 19	364	.....	10,613 48
V. 12	"	"	Oct. 12	.....	.....	68 22
V. 11	"	"	" "	.....	.....	198 79
V. 3	"	"	" 16	21	.....	5,008 46
V. 8	"	"	" "	35	.....	8,122 30
V. 10	"	"	" 18	552	.....	117,574 06
V. 14	"	"	" 27	27	.....	4,568 69
V. 17	"	"	"	6	.....	890 19
			1864.			
V. 32	"	"	March 3	5	.....	816 94
			1863.			
V. 7	"	"	Oct. 16	1	.....	342 24
152	"	Memphis	" 20	.....	.....	980 10
V. 5	"	St. Louis	" 16	.....	.....	120 47
158	"	"	" 23	4	.....	1,240 20
V. 24	Natchez	Vicksburg	" "	12	.....	2,323 61
V. 46	Vicksburg	Cincinnati	Oct.	.....	.....	312 42
V. 35	"	"	Dec.	5	.....	367 75
V. 25	"	"	" 23	17	.....	2,318 62
V. 26	Natchez	"	" "	3	.....	570 22
V. 27	"	"	" "	2	.....	313 91
			1864.			
N. 3	"	St. Louis	Jan'y 29	47½	.....	11,890 74
N. 7	"	"	.....	45½	.....	10,590 02
180	Vicksburg	Memphis	Feb'y	4	.....	1,181 52
			1864.			
V. 33	Vicksburgh	Cincinnati	M'ch 3	13	.....	1,494 69
V. 36	"	"	"	75	.....	17,923 90
V. 38	"	"	" 2	95¼	.....	25,426 18
N. 10	Natchez	"	Apr. or May	.....	.....	3,497 52
N. 11	"	"	June 10	10	.....	6,286 03
N. 12	"	St. Louis	"	572	.....	366,170 83
V. 45	Vicksburgh	"	Nov.	3	.....	44 76
195	"	Memphis	Dec.	.....	.....	402 30
V. 51	"	"	"	5	.....	1,293 41
V. 52	"	"	"	5	.....	1,499 11
V. 49	"	"	"	8	.....	2,379 62
V. 50	"	"	"	11	.....	2,379 98
53	"	"	"	17	.....	1,738 24
N. 14	"	"	"	17	.....	6,800 44
			1863.			
V. 15	"	St. Louis	Oct. 27	.....	.....	313 70
74	Chickasaw Bayou	Memphis	June	180	.....	40,668 93
				5,078¼	.....	1,516,050 66

Judgments:		
Michael Slattery	1 bale	$320 55
John A. Kline, administrator	560 bales	195,300 00
Clarissa Ashford	83 "	22,589 43
Warren R. Dent	75 "	17,923 90
Woodruff, Bouchard and Elgee	572 "	366,170 83
J. W. Vick	17 "	1,356 10
Thomas P. Rubey	8 "	1,210 48
I. B. Christian's adm'r	20 "	7,685 75
Benj. Roach's ex'r	69 "	8,907 69
Specifically traced	45 "	14,759 90
Loss to this fund		512 73
	1,450	567,737 36
Available	3,628½ bales	$948,313 30

26 *Exhibit No.* 10, *with second report of special commissioner.—Schedule of cases in which allowances are made.*

No.	Names of claimants.	Place of capture.	Date of capture.	Shipped to—	Bales claimed.	Bales allowed.	Amount allowed.
	PAYABLE OUT OF FIRST FUND.						
3150	Ellen D. Batchelor	Warren County	June, 1863	Vicksburg	51	51	9,813 42
3162	John H. Newman	" "	" 15, "	"	50	50	9,621 00
3175	J. Reese Cook	" "	" "	"	40	40	7,696 80
3184	Charlotte Spear	Hinds County	May, "	"	70	70	13,469 40
3194	Duff Green	Warren County	June, "	"	19	19	3,655 98
3197	Sarah Cowan	" "	" "	"	48	48	9,236 16
3199	E. B. Willis	" "	" "	"	40	40	7,696 80
3400	John W. Maybin	" "	May or June, "	"	402	400	76,968 00
3419	A. Burwell	" "	May, "	"	118	118	22,705 56
3470	Thomas H. Jett	" "	June, "	"	25	25	4,810 50
3474	J. J. Cowan, adm'r	" "	June, "	"	129	120	23,090 40
3511	Jno. R. McAlpine	Claiborne County	May or June, "	"	100	100	19,242 00
3182	Thomas Kidd, guardian.	Hinds County	" " "	"	64	64	12,314 88
3191	Thomas Kidd	" "	May, "	"	480	480	92,361 60
3510	Alex. Hutchison	Claiborne County	June, "	"	130	130	25,014 60
3176	Thos. A. Marshall	Warren County	July, "	"	30	22	4,232 24
3399	John L. Hebron	" "	July or Aug., "	"	30	30	5,772 60
3473	George Hawkins	" "	July, "	"	96	15	2,886 30
3421	John Willis	Yazoo County	" "	"	125	125	24,052 50
3192	C. H. Harrison	" "	" "	"	228	200	38,484 00
3393	A. W. Brien	Warren County	July or Aug., "	"	40	40	7,696 80
3174	Juliet Glass	" "	Aug. 4, "	"	18	18	3,463 56
3179	Richard Taylor	" "	" "	"	25	6	1,154 52
3439	James Meagher	Hinds County	Aug. or Sep., "	"	114	69	13,276 98
3188	Mary P. Marye	Sunflower County	July, 1863	Vicksburg	45	45	8,658 90
3501	Maria Ragsdale	" "	" "	"	100	100	19,242 00
3466	Mary W. Thomas	Yazoo County	" "	"	112	112	21,551 04
3196	J. B. Brabston	Warren County	June, "	"	32	32	6,157 44
3424	Wm. E. Hall	Claiborne County	Jan'y 18, 25, 1864	"	317	300	57,726 00
3545	Isaac R. Wade	" "	.....	"	21	21	4,040 82
3550	Clarissa Young	" "	Feb'y 20, "	"	116	116	22,320 72
3554	Martha Crane	" "	" " "	"	235	235	45,218 70
3170	E. K. McLean	Carroll County	" 14, "	"	21	21	4,040 82
3480 / 3354	Henry Bodenheim	Yazoo County	" "	"	183	90	17,317 80
3557	Dan'l J. Dohan	Claiborne County	.....	"	138	138	26,553 96
3498	Benj. Harwood	" "	March 1, "	"	75	75	14,431 50
3499	James A. Hutchinson	" "	" "	"	65	65	12,507 30
3183	James Stewart	Jefferson County	March, "	Natchez	70	70	13,469 40
3293	Emma J. Jones	Warren County	September, "	Vicksburg	100	100	19,242 00
3171	Thomas Y. Berry	Claiborne County	Feb'y 28, "	Natchez	149	149	28,670 58
3229	Seth H. Kellogg	" "	July 16, "	"	714	714	137,387 88
2539	Rob't G. Johnson	Yazoo County	Feb'y 14, "	Vicksburg	149	149	28,670 58
					5,114	4,812	925,925 04

And upon the foregoing findings of fact, the court decides the following as its—

CONCLUSIONS OF LAW.

1. The counsel for the Government not having taken steps to consolidate suits where the parties were seeking to recover the proceeds of

their property out of a common fund, the court would have been compelled to try the cases separately, and render judgment in each without charging each with a conjectural proportion of the general losses to which the fund might have been subjected. It appearing to the court that, at the rate claimants have been recovering, the funds would be exhausted before all of the judgments likely to be recovered were satisfied, and that the resulting consequence would be either that the later judgments would remain unsatisfied or that the Government would be required to satisfy them from other sources, the court was warranted, for the ultimate protection of the Government and of such later claimants, in suspending proceedings in all of the cases before it, and sending them to a commissioner, who, as an accountant, would marshal the assets of the property, and charge it with the proper losses, so that equal and exact justice should be done to all. As to the title of the claimants and their rights to the proceeds, the court has determined them upon the evidence irrespective of the commissioner's report, wherever requested so to do by either the claimant or the defendants. The first exception of the defendants to the reference of these cases to a commissioner is therefore overruled.

2. As to the Natchez and Vicksburgh cotton, it appears from the evidence that the parcels of different owners were intermingled before shipment, and that some of the shipments from the two points were subsequently intermingled. It being impossible to trace the specific property of each owner, and likewise impossible to determine whether his cotton remained in a shipment from the original point of shipment, or went into the intermingled shipments from different points, the whole must be thrown into a common mass, and the average thereof be the measure of damages for all who contributed thereto.

3. With regard to suits brought subsequent to the 20th day of August, 1868, to recover out of the funds now disposed of, the court has no jurisdiction to hear and determine them, and no reservation can be made from the fund to await the possibility of jurisdiction being hereafter conferred.

By the court.

27 In the Court of Claims.

JOHN B. RAYMOND, ASSIGNEE IN BANKRUPTCY of J. W. Maybin, *vs.* THE UNITED STATES. } No. 3400.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, and the final judgment of the court thereon; of the application of the Attorney-General for the allowance of an appeal, as filed in the clerk's office August 19, 1875, and of the order of the chief-justice of said court allowing the same; of the order of the court filed May 24, 1875; of the findings of fact by the court, and the conclusions of law thereon.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Washington, this 20th day of January, 1876.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsement on cover:) No. 908. The United States, appellant, vs. John B. Raymond, assignee of J. W. Maybin, a bankrupt. Court of Claims. Filed 24 January, 1876.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1875.

No. 908. THE UNITED STATES, APPT., vs. JNO. B. RAYMOND, ASSIGNEE, &C.
911. " " " " " THOMAS KIDD.
912. " " " " " J. J. COWAN, ADMR., &C.
913. " " " " " J. B. BRABSTON.
914. " " " " " CHARLOTTE SPEAR.
915. " " " " " E. K. McLEAN.
916. " " " " " J. REESE COOK.
917. " " " " " ELLEN D. BATCHELOR.
918. " " " " " GEORGE HAWKINS.
919. " " " " " J. J. COWAN, ADMR., &C.
921. " " " " " ROBERT G. JOHNSON.
922. " " " " " WM. F. SMITH.
924. " " " " " HANNAH BODENHEIM.

APPEALS FROM THE COURT OF CLAIMS.

On consideration of the motion of counsel for the appellees, it is ordered & directed that the several records in the above-named cases be remanded to the Court of Claims, with directions to said court to certify in each of said cases, to wit:

1st. Whether the cotton owned by these respective claimants, and seized from them by the United States, did or did not constitute a part of the cotton delivered to and received by the Treasury agent of the United States at Vicksburg, Miss., during the years 1863 and 1864, and whether or not the same was there intermingled with other cotton, belonging to other persons, so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized.

2nd. Whether the proceeds of the sales of the various lots of cotton, owned by and seized from the respective appellees in these cases, do or do not constitute a part of the fund found to be in the Treasury of the United States, accruing from the sales of the said intermingled mass of cotton, so shipped from Vicksburg, Miss., during said years 1863 and 1864, and which was sold at Cincinnati & St. Louis, for and on behalf of the United States.

And that the said Court of Claims make due return in the premises.

28 March, 1876.

True copy.

[SEAL.] Test:

D. W. MIDDLETON,
Clerk Sup. Court U. S.

JOHN B. RAYMOND, ASSIGNEE, &C., OF J. W. Maybin,
vs.
THE UNITED STATES.

Supplemental findings of fact.

The Court of Claims, pursuant to the order of the Supreme Court, made March 28, 1876, requiring this court to make & certify as to certain facts in this case, does now make & certify to the Supreme Court the following supplemental facts:

First. And in response to the instructions of the Supreme Court to find "whether the cotton owned by the claimant's assignor, and seized from him by the United States, did or did not constitute a part of the cotton delivered to and received by the Treasury agent at Vicksburg, Miss., during the years 1863 and 1864," the Court of Claims finds as follows:

The cotton owned by the claimant's assignor, and seized from him by the United States, was shipped on vessels at Haines' Bluff, as detailed in the previous finding. It is not specifically traced by the evi-
2 dence to the official custody of the Treasury agent at Vicksburg, nor to the official custody of any military officer; and, from the circumstances attending its seizure and shipment, it cannot be so traced by the claimant. But the Treasury agent at Vicksburg, about the same time, received large quantities of cotton from unknown sources, belonging to unknown persons, and from various places of capture and shipment, and this cotton might, & amid the circumstances of the case naturally would, have gone into the mass at Vicksburg, and constitute a part of the cotton received by the Treasury agent at that place, and neither its loss nor its shipment to any other point is shown by the defendants. The Court of Claims, upon these facts & the presumptions therefrom arising, finds, though without there being direct proof of the ultimate fact, that the cotton owned by the claimant's assignor constituted a part of the cotton received by the Treasury agent at Vicksburg, and contributed to the fund set forth in the commissioner's report, which forms part of the previous findings of the court.

3 Second. And in response to the instructions of the Supreme Court to find "whether or not the same was there intermingled with other cotton belonging to other persons so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized," the Court of Claims finds as follows:

The cotton so seized was intermingled with other cotton belonging to other persons immediately after capture & before shipment, so as to destroy the identity of the several lots, and the various shipments from different points were subsequently intermingled in whole or in part at Vicksburg, so that it is impossible to determine whether the cotton of any owner remained in a shipment from the original point or went into intermingled shipments from different points, and it is likewise impossible to ascertain the specific rate at which he should recover except by throwing the whole into a common mass, as has been done in
4 the report of the commissioner, forming part of the previous findings of this court.

Third. And in response to the instructions of the Supreme Court

to find "whether the proceeds of the sales of the cotton owned by & seized from the claimant in this case do or do not constitute a part of the fund found to be in the Treasury of the United States accruing from the sales of the said intermingled mass of cotton so shipped from Vicksburg, Miss., during said years 1863 and 1864, and which was sold at Cincinnati and St. Louis for and on behalf of the United States," the Court of Claims finds as follows:

There is no direct evidence to show that the claimant's cotton continued in or was separated from the mass of intermingled cotton at Vicksburg, but the whole of said mass was shipped from there, and was sold at St. Louis & Cincinnati, less certain losses of unidentified cotton, with which the fund has been duly charged; and on these facts, and the presumption therefrom arising, but without direct proof of the ultimate fact, the court finds that the proceeds of the sales of the
5 claimant's cotton do constitute a part of the fund found to be in the Treasury accruing from the sales of the intermingled mass of cotton so shipped from Vicksburg and sold at St. Louis & Cincinnati, more particularly set forth & described in the report of the commissioner, which forms a part of the previous findings of this court.

In the Court of Claims, December term, 1875.

John B. Raymond, assignee, &c.,	v. The United States.
Thomas Kidd	vs. Same.
J. J. Cowan, admr. of Sarah Cowan,	" Same.
J. B. Brabston	" Same.
Charlotte Spear	" Same.
E. K. McLean	" Same.
J. Reese Cook	" Same.
Ellen D. Batcheler	" Same.
George Hawkins	" Same.
J. J. Cowan, admr. of John Cowan	" Same.
Robert G. Johnson	" Same.
William F. Smith	" Same.
Hannah Bodenhiem	" Same.

The Court of Claims, in obedience to the order of the Supreme Court of the United States hereunto annexed and returned, makes these its supplemental findings of fact in each of the causes aforesaid.

In testimony whereof I hereunto set my hand and affix the seal of said Court of Claims this 3rd day of April, 1876.

JOHN RANDOLPH,
Asst. Clk. Court of Claims.

O

2 Ct Cl 651

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THE UNITED STATES, APPELLANTS,
vs.
JOHN B. RAYMOND, ASSIGNEE. } No. 908.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

THE UNITED STATES, APPELLANTS,
vs.
JOHN B. RAYMOND, ASSIGNEE. } No. 908.

APPEAL FROM THE COURT OF CLAIMS.

Brief for the United States.

STATEMENT OF THE CASE.

This claim is now prosecuted by the assignee in bankruptcy of the original claimant, Joseph W. Maybin, who instituted it to recover the proceeds of 402 bales of cotton, alleged to have been taken, about May 22, 1863, by the order of General Blair, and by the soldiers of his division, from the plantation in Warren County, Mississippi, upon which it was raised, and where its owner resided. In the summer of 1873, this and a great many other cotton-claims were pending in the Court of Claims, the aggregate of which far exceeded the fund in the Treasury from which it was claimed any judgments that might be obtained therein should be satisfied. Accordingly, a commissioner to take testimony in all of

them was appointed June 4, 1873, and his report, as revised and amended by the court, so far as it concerns this suit, is the finding of facts in this case. The course heretofore pursued in that court, where cotton of numerous claimants was found to have been seized and sold in an indistinguishable mass, was adopted here. Different "funds" were declared to exist, created by the proceeds of different lots taken from some one place, irrespective of previous ownership.

The court ordered that "the FIRST FUND, consisting of Vicksburgh and Natchez cotton, intermingled so that the identity thereof has been destroyed, as described in the report, will stand at the sum of $948,313.30, the number of bales contributed to this fund by capture, and which it represents, will stand at 5,341 bales, and the price per bale which parties should recover will stand at $177.55 per bale." (Record, 6, folio 17.)

"During the years 1863, 1864, and 1865, fourteen thousand three hundred and thirty-five bales of cotton were captured and taken in the State of Mississippi. The parcels of different owners were intermingled, so that the identity of each parcel was destroyed, and the property of each owner could not be traced. While *in transitu* large quantities were stolen, destroyed, taken for military purposes, and otherwise lost from the mass." (Record, 8, 9, folio 20.) The report then goes on to state these losses, &c., until it appears that, of this 14,335 bales, the proceeds of only 6,024¼ are shown to have reached the Treasury, netting $1,250,759.26, if the internal-revenue fees, &c., are deducted, and $1,395,368.43 without these charges. The charges are *not* allowed by the court, but are counted as part of the fund, (Record, 10, 11,) even in cases where they were deducted by the

Treasury from proceeds released to various parties, to whom it would seem these fees properly belong, if not rightly retained by the Government.

The findings adopt this language from the report: "To arrange the cotton referred to, and the corresponding proceeds, into funds is a task of no little delicacy. There is so much uncertainty connected with the facts, and the various lots are so confused and intermingled, that it is only possible to approximate, and we are compelled to grope in the dark and separate the cotton into funds with such imperfect lights as we have before us. I have divided the cotton captured in Mississippi into eight separate funds, and, in so doing, have taken only the cotton remaining on hand." (Record, 11, folio 21.) This claim of Dr. Maybin is charged upon the "FIRST FUND," which is thus constituted:

"FIRST FUND.

"The *most* of the cotton included in this report was captured in the vicinity of Vicksburgh, Mississippi, and was transported to that city. From there it was shipped generally to Memphis, Tennessee, and thence to Saint Louis and Cincinnati, for sale.

"The collection of cotton in that locality began in June, 1863, about the time the Army surrounded the city of Vicksburgh, and continued until about July, 1865. *A very large quantity of captured cotton was used by the Army of the United States for defensive purposes* in the vicinity of Vicksburgh. After the surrender of Vicksburgh, this cotton, or *as much of it as could be saved*, was collected and transported to Vicksburgh. The work of gathering cotton from the defenses around Vicksburgh continued until about the 1st of November, 1863,

and after that date small quantities were received, and even as late as March, 1864, a few bales were dug out and brought in from those defenses.

"The testimony shows that, during the strife in the counties surrounding Vicksburgh, the people were in the habit of concealing their cotton in swamps and forests to protect it from the torches of the confederates, and also from the hands of the Union Army. During the latter part of the year 1863, and during the year 1864, much of this concealed cotton was discovered by the military forces of the United States, and by the Treasury officials, and was seized and conveyed by them to Vicksburgh and to Natchez.

"Neither the records of the Department, nor the depositions of witnesses filed in the various cases, enable me to determine how long the various lots of cotton remained in Vicksburgh before shipment to the North for sale. But I find that large massses of cotton were stored in warehouses and piled up on wharves in Vicksburgh for indefinite periods of time, and I am led to the belief that large quantities of cotton were retained in Vicksburgh many months before shipment to Memphis, Saint Louis, and Cincinnati.

"I find that a large quantity of cotton was, immediately after seizure, sent to Natchez, but the greater part if not all of such cotton was reshipped, sooner or later, to Vicksburgh; at this point it was intermingled with the mass of cotton accumulated in that city, *except as to lot* 121, hereinafter mentioned.

"*I have, therefore, arranged the cotton shipped from Vicksburgh and Natchez, during the years* 1863 *and* 1864, *into one fund, and have called it the first fund, to answer to claims for cotton seized and sent to those two points during*

those two years. Two expeditions were sent up the Yazoo River, one in 1863, under General Herron's command, and the other in 1864, under the command of Colonel Coates. Both of these expeditions captured cotton, which was shipped down the Yazoo River to Vicksburgh, and I have, therefore, included it in the fund under consideration.

"A small lot of cotton, consisting of fifteen bales, was brought to Memphis, by a steamboat, in August, 1863; of these, twelve bales were saved from burning at Perkins's Landing, and three picked up in the Yazoo River. This cotton undoubtedly was the property of the people residing in the vicinity of Vicksburgh, who contributed to cotton which forms the first fund, and I have, therefore, assigned the lot to said fund.

"Some of the cotton captured in the vicinity of the railroad-bridge over the Big Black River in *June*, 1863, was conveyed on wagon-trains to Haines's Bluff; such cotton, *I think*, eventually went into Vicksburgh, and I have, therefore, included it in the first fund.

"*In every case where the evidence shows the seizure of cotton, and the shipment thereof to Vicksburgh or Natchez, during the years* 1863 *and* 1864, *I have recommended the payment of the allowance out of this fund.* All of the cotton allowed to claimants out of this fund, except in two cases, was captured on and before the 1st day of March, 1864. In the two cases so excepted, the cotton was captured in July and September, 1864. In view of the great uncertainty as to the time of shipment from Vicksburgh, and the impossibility of tracing the cotton of the various claimants into specified lots, I deem this to be the only just method of distributing the fund.

"I have prepared and filed herewith a paper, marked

'Exhibit No. 2,' showing the lots of cotton put into the first fund, the date of shipment, the judgments of the court, and the number of bales remaining available; to which reference is made.

"After deducting the amounts recovered in judgments of the court heretofore rendered, and the amount released by the Treasury, there will remain a balance in the Treasury derived from cotton, which has been segregated as belonging to the first fund, amounting to $948,313.30, and this is designated for the purposes of this report as the first fund. The number of bales segregated as above and represented by this fund is 5,341, giving as the price per bale which should be recovered by claimants, $177.55."

Having made this general statement, the report (adopted by the court as its finding) proceeds to apply the evidence peculiar to this particular case, thus:

"The evidence shows that in the month of May or June, 1863, *the military forces* of the United States seized and carried away from the plaintiff's plantation, in Warren County, Mississippi, four hundred bales of cotton, the property of the claimant, and it was conveyed on army-wagons to Haines's Bluff, where it was loaded on vessels on the river. This cotton *cannot be traced beyond this point*, and *probably* became intermingled with the mass of cotton at Vicksburgh. The claimant is entitled to judgment for 400 bales of cotton at the average rate per bale, *payable out of the first fund.* Four hundred bales of cotton, at $177.55 per bale, $71,020." (Record, 13.)

It will be noticed that 5,341 of the 6,024¼ bales available, collected in Mississippi from 1863 to 1865, go into the *first fund*, making $948,313.30 out of $1,250,759.26;

so that all the other "funds" are insignificant in comparison. Upon page 12 of the record, lines 14 and 15, the report says that lot 121 was not intermingled with the mass at Vicksburgh. By exhibit No. 2, on page 16, it will be seen that this lot contained 1,362 bales, netting $387,095.25, more than one quarter of this first fund.

In this state of the record this court, upon claimant's motion, directed the following questions to be answered, and declined to require the additional findings suggested by the Government:

"1st. Whether the cotton owned by these respective claimants, and seized from them by the United States, did or did not constitute a part of the cotton delivered to and received by the Treasury agent of the United States at Vicksburgh, Miss., during the years 1863 and 1864, and whether or not the same was there intermingled with other cotton, belonging to other persons, so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized.

"2d. Whether the proceeds of the sales of the various lots of cotton, owned by and seized from the respective appellees in these cases, do or do not constitute a part of the fund found to be in the Treasury of the United States, accruing from the sales of the said intermingled mass of cotton, so shipped from Vicksburgh, Miss., during said years 1863 and 1864, and which was sold at Cincinnati and Saint Louis for and on behalf of the United States."

To which the Court of Claims thus responded:

"*First.* The cotton owned by the claimant's assignor, and seized from him by the United States, was shipped

on vessels at Haines's Bluff, as detailed in the previous finding. It is *not* specifically traced by the evidence to the *official custody* of the *Treasury agent* at Vicksburgh, *nor to the official custody of any military officer;* and, from the circumstances attending its seizure and shipment, it cannot be so traced by the claimant. But the Treasury agent at Vicksburgh, about the same time, received large quantities of cotton from *unknown* sources, belonging to *unknown* persons, and from various places of capture and shipment and this cotton might, and amid the circumstances of the case naturally would, have gone into the mass at Vicksburgh, and constitute a part of the cotton received by the Treasury agent at that place, and neither its loss nor its shipment to any other point is shown by the defendants. The Court of Claims, upon these facts and the presumptions therefrom arising, finds, though *without there being direct proof of the ultimate fact*, that the cotton owned by the claimant's assignor constituted a part of the cotton received by the Treasury agent at Vicksburgh, and contributed to the fund set forth in the commissioner's report, which forms part of the previous findings of the court.

"*Second.* And in response to the instructions of the Supreme Court to find 'whether or not the same was there intermingled with other cotton belonging to other persons so as to destroy the indentity of the several lots belonging to the various persons from whom the same had been seized,' the Court of Claims finds as follows:

"The cotton so seized was intermingled with other cotton belonging to other persons immediately after capture and before shipment, so as to destroy the identity of the several lots, and the various shipments from different points were subsequently intermingled *in whole or in*

part at Vicksburgh, so that it is impossible to determine whether the cotton of any owner remained in a shipment from the original point or went into intermingled shipments from different points, and it is likwise impossible to ascertain the specific rate at which he should recover except by throwing the whole into a common mass, as has been done in the report of the commissioner, forming part of the previous findings of this court.

"*Third.* And in response to the instructions of the Supreme Court to find 'whether the proceeds of the sales of the cotton owned by and seized from the claimant in this case do or do not constitute a part of the fund found to be in the Treasury of the United States accruing from the sales of the said intermingled mass of cotton so shipped from Vicksburgh, Miss., during said years 1863 and 1864, and which was sold at Cincinnati and Saint Louis for and on behalf of the United States,' the Court of Claims finds as follows:

"There is *no direct evidence* to show that the claimant's cotton continued in or was separated from the mass of intermingled cotton at Vicksburgh, but the whole of said mass was shipped from there, and was sold at Saint Louis and Cincinnati, less certain losses of unidentified cotton, with which the fund has been duly charged; and on these facts and the presumption therefrom arising, but *without direct proof of the ultimate fact*, the court finds that the proceeds of the sales of the claimant's cotton do constitute a part of the fund found to be in the Treasury accruing from the sales of the intermingled mass of cotton so shipped from Vicksburgh and sold at Saint Louis and Cincinnati, more particularly set forth and described in the report of the commissioner, which forms a part of the previous findings of this court."

CONCLUSIONS OF LAW.

1. The counsel for the Government not having taken steps to consolidate suits where the parties were seeking to recover the proceeds of their property out of the common fund, the court would have been compelled to try the cases separately, and render judgment in each without charging each with a conjectural proportion of the general losses to which the fund might have been subjected. It appearing to the court that, at the rate claimants have been recovering, the funds would be exhausted before all of the judgments likely to be recovered were satisfied, and that the resulting consequence would be either that the later judgments would remain unsatisfied or that the Government would be required to satisfy them from other sources, the court was warranted, for the ultimate protection of the Government and of such later claimants, in suspending proceedings in all of the cases before it, and sending them to a commissioner, who, as an accountant, would marshal the assets of the property, and charge it with the proper losses, so that equal and exact justice should be done to all. As to the title of the claimants and their rights to the proceeds, the court has determined them upon the evidence, irrespective of the commissioner's report, wherever requested so to do by either the claimant or the defendants. The first exception of the defendants to the reference of these cases to a commissioner is therefore overruled.

2. As to the Natchez and Vicksburgh cotton, it appears from the evidence that the parcels of different owners were intermingled before shipment, and that some of the shipments from the two points were subsequently intermingled. It being impossible to trace the specific prop-

erty of each owner, and likewise impossible to determine whether his cotton remained in a shipment from the original point of shipment, or went into the intermingled shipments from different points, the whole must be thrown into a common mass, and the average thereof be the measure of damages for all who contributed thereto.

3. With regard to suits brought subsequent to the 20th day of August, 1868, to recover out of the funds now disposed of, the court has no jurisdiction to hear and determine them, and no reservation can be made from the fund to await the possibility of jurisdiction being hereafter conferred.

ASSIGNMENT OF ERRORS.

The defendants assign as errors—

1. The rendition of judgment for the claimant. The cotton not being specifically traced into the hands of *any* officer, civil or military, *charged with the duty of keeping, forwarding, or selling it*, judgment should have been rendered for the defendants.

2. The cotton having been seized for, and appropriated to, military use, the court had no jurisdiction.

3. The court had no authority to constitute a fund and to award payment to the claimant therefrom.

4. Such fund was erroneously adjusted, in legal principle, if the court could constitute any fund.

5. A fund created by throwing into it all the proceeds of cotton taken during three years, and at different places, is not warranted by law, nor as the legal result of the facts found.

6. The proceeds of cotton distinctly and specifically,

traced were thrown into this fund, alleged to be created from the sales of an indistinguishable mass of cotton.

7. The court had no power to appoint a commissioner who should find facts, nor to adopt as their own his findings.

8. The duty of drawing conclusions of fact from the evidence, the Court of Claims could not delegate to a commissioner.

9. The original appropriation being for military use, the burden of showing that it was not consumed in or destroyed by the military operations in which it was employed is upon the claimants.

BRIEF.

I.

Taking the case precisely as it stands when placed in the light most favorable for the claimant, he is not entitled to recover.

1. As indicated in the brief in Ross's case, (No. 608 of this term,) this court has never allowed a recovery unless the plaintiff clearly traced his cotton to the hands of some officer directly charged with the duty of caring for it and seeing that its proceeds did reach the Treasury. (Crussell's case, 14 Wallace, 1.)

2. This cotton was taken solely and expressly for a military use. If any of it escaped, that was not because it was not subjected to all the hazards of the situation, and of the purpose for which it was seized. The Court of Claims has no jurisdiction as to such property. Act of July 4, 1864, (13 Stats., 381.) It was taken, not simply as cotton, but as a suitable material from which to construct defensive works. Its appropriation by the

Army was to purposes purely military. (Filor's case, 9 Wallace, 48.)

At least, it is not incumbent on the Government, in such cases, to prove that any or how much escaped. If entitled to recover at all, the claimant should show this.

II.

Of course, if the proposition that the cotton must be specifically traced is sound, there can be no occasion for forming a fund.

If the doctrine of confusion of goods is applicable at all, only *those parcels* should be treated as a mass which were in fact mingled. Different aggregations, known to have been seized, shipped, and sold at places and times far apart, ought not to be thrown together, so as to make confusion worse confounded.

For instance, cotton *known* to have been put into the fortifications at Vicksburgh should only claim a *pro rata* share of cotton *known* to have been taken from those fortifications, &c., &c.

III.

If the court could create a fund from the proceeds of intermingled cotton, that formed in this case is evidently erroneous, and not accordant with the principles of law nor with the requirements of natural justice.

1. It swept into one common mass cotton taken from various places throughout the whole State of Mississippi; though the commissioner reports that "the *most of it*" "was captured in the vicinity of Vicksburgh," and transported to and shipped from that city. (Record, 11, folio 22.)

But detailed Exhibit No. 2, (Record, 14,) shows that

certain small quantities were shipped from Haines' Bluff, Perkins' Landing, &c.; and that *very large amounts* were shipped direct from Natchez. Upon what conceivable theory should a man whose cotton went to and from Natchez contribute to pay for that dug up or captured at Vicksburgh?

Take the last item in that exhibit; lot 74, one hundred and eighty bales, shipped from Chickasaw Bayou to Memphis in *June*, 1863; value, $40,668.93. Why should this cotton, forwarded in *the month before Vicksburgh surrendered*, be deemed part of the mass obtained there?

IV.

Time, as well as space, was disregarded in creating this fund. (Exhibit No. 2, Record, 16.)

Cotton shipped from Vicksburgh and other places in 1863, at dates from July to December of that year, enter into it. With this is "pooled in" that of Robert G. Johnson, (No. 921 of this term,) of E. K. McLean, (No. 915,) of H. Bodenheim, (No. 924,) and of *many* others whose petitions, not being before this court, cannot be specified; whose cotton did not leave their plantations till 1864—some of it late in that year. Why should this cotton, taken long after the surrounding country had been subdued and occupied, be subjected to the perils and losses of that which, having passed through the siege of Vicksburgh, was dug out of its fortifications? How *can* it be deemed mingled with that which had gone into the Treasury while it remained in the possession of its owners?

V.

Cotton specifically traced was thrown into this mass. That which is followed *direct* from Natchez to its place

of sale in Cincinnati is subjected to the losses and risks of Vicksburgh. How much was obtained on the Yazoo River expeditions could be known. (Record, 9, 16; Exhibit No. 10.) It was put in with the Vicksburgh cotton *because shipped from there.* That is, because it happened to go North from that port, after it became as peaceful as Saint Louis, it must be subjected in law to those risks and losses of the siege which, in fact, it confessedly escaped.

Again: lot No. 121, shipped North from Natchez via Vicksburgh, was not intermingled. (Record, 9.) It consisted, as already mentioned, of 1,362 bales shipped to Memphis, August 31, 1863, valued at $387,095.25. (Exhibit 2, on page 14.) It was a lot by itself and created a fund of its own. It the commissioner's report could be referred to, it would show that one-quarter of it bore the brand of the Confederate States, "C. S. A.," yet the Government is called upon now to divide its proceeds among claimants who never owned a bale of it, or if they did had transferred their title to the confederate government.

VI.

Though by R. S., pp. 197–'8, §§ 1070, 1075, the Court of Claims can appoint a commissioner *to take testimony,* he has no authority to report *inferences* or conclusions from the testimony, nor can the court act upon such conclusions.

Certainly they cannot delegate to another their judicial powers, and refer to him the very issue raised by the pleadings.

(Lunsford v. Bostion, 1 Dev.'s Eq., (No. Car.,) 483.)

VII.

If tracing the cotton to the hands of a quartermaster, under the circumstances of the capture of the town in which it is stored, would throw the burden of proof upon the Government, (which we strenuously deny,) certainly such is not the case when the purpose for which it is appropriated is purely military.

THE UNITED STATES, APPELLANTS.
vs.
THOMAS KIDD. } No. 911.

The claim in this case is charged upon the first fund aforesaid. "The proof shows that the claimant owned and had in possession on his plantation in Hinds County, Mississippi, in *May*, 1863, five hundred bales of cotton, and that the same was *taken by the United States Army* to General Osterhaus's headquarters, and hauled, the next month, in army-wagons, in charge of United States soldiers, *toward Vicksburgh*."

The claimant only called for 480 bales in his petition, and judgment was rendered in his favor for that number, at the specified rate of the cotton in that "fund," $177.55 a bale. Kidd states expressly (Record, 1) that said cotton was "temporarily used for Army purposes." This brings it within the decision in Filor's case, (9 Wallace, 49,) since the proof sustains the statement that it was taken for such use.

The argument pursued in Ross's case, (907,) and in Raymond's case, (911,) will be adopted in this also.

The cases mentioned below agree with numbers 908 and 911 stated above, unless in the following circumstances:

THE UNITED STATES, APPELLANTS,
vs.
JAMES J. COWAN, ADMINISTRATOR of Sarah Cowan, deceased. } No. 912.

In May, 1863, the cotton was seized *by soldiers of the United States*, in Warren County, on a plantation [eight miles east of Vicksburgh] and carried away *toward Vicksburgh*. The petition states that it was used for military purposes. (Record, 1.)

THE UNITED STATES, APPELLANTS,
vs.
J. B. BRABSTON. } No. 913.

A few days before the fall of Vicksburgh the cotton was seized in Warren County *by the officers and soldiers of General Osterhaus's command, and taken to Big Black Bridge*, and there was mingled with other cotton. It then lost its identity, *but must be taken to have gone* into the mass of cotton captured at and shipped from Big Black Bridge to Vicksburgh.

THE UNITED STATES, APPELLANTS,
vs.
CHARLOTTE SPEAR. } No. 914.

For cotton taken late in May, 1863, in Warren County, Mississippi, "by United States officers and soldiers, and

conveyed in army-wagons toward Haines's Bluff, on the Mississippi River," and traced no farther.

The petition admits that it was originally taken for Army purposes. (Record, 1.)

THE UNITED STATES, APPELLANTS,
vs.
J. REESE COOK. } No. 916.

About the middle of June, 1863, the cotton was captured in Warren County, about eight miles east of Vicksburgh, *by a party of United States soldiers, and transferred in wagons*, and in part, at least, unloaded at fortifications in the neighborhood, and used for defensive purposes. After the fall of Vicksburgh some of the claimant's cotton was identified in that city. The only "fund" responsible for this (in any event) is that created by cotton dug from the fortifications.

THE UNITED STATES, APPELLANTS,
vs.
GEORGE HAWKINS. } No. 918.

About July 3, 1863, the cotton was seized in Warren County, and *carried away in Army wagons by soldiers under command of an officer toward Vicksburgh.* It is traced no farther.

THE UNITED STATES, APPELLANTS,
vs.
JAMES J. COWAN, ADMINISTRATOR
of John Cowan, deceased. } No. 919.

In June, 1863, the cotton was seized in Warren County near Big Black Bridge, and *taken away in Army wagons*

by United States soldiers under command of an officer. The evidence does not show to what point the cotton was taken.

THE UNITED STATES, APPELLANTS, *vs.* E. K. MCLEAN. } No. 915.

This claimant's cotton remained upon its owner's plantation in Yazoo County and in his possession till February 14, 1864, when it was seized, with other cotton, by Colonel Coates's expedition up the Yazoo River, and carried down toward Vicksburgh. Whether it ever reached there or not, the fund, if any, responsible for it is this Yazoo cotton, and not that which had been carried from Vicksburgh north, and its proceeds passed into the Treasury months before this was taken.

THE UNITED STATES, APPELLANTS, *vs.* ROBERT G. JOHNSON. } No. 921.

Precisely like No. 915; seized by same soldiers, the same day, and took the same course.

THE UNITED STATES, APPELLANTS, *vs.* HANNAH BODENHEIM, EXECUTRIX. } No. 924.

Identical with Nos. 915 and 921, except that upon reaching Vicksburgh the cotton was turned over to an assistant quartermaster of the Army.

THE UNITED STATES, APPELLANTS, *vs.* WILLIAM F. SMITH. } No. 922.

The cotton was captured in December, 1863, by a por-

tion of Colonel Osband's expedition; was then loaded in vessels and shipped from Skipwith Landing *down the river*, (*i. e.*, in the direction of Vicksburgh.) It is charged upon the *third* fund. Exhibit No. 4, record 12, shows how this fund was made up. Every bale of it was shipped *before* December, 1863, while his was taken that month; so it is demonstrated that it is not entitled to share with these proceeds.

In these several cases the assignments of error are the same as those stated in Raymond's case, No. 908, and the arguments the same as in that case and in Ross's case, No. 907.

The additional findings do not actually state any additional facts. They could not, because the Court of Claims had strained the testimony in its original findings to the utmost. The "ultimate fact" of a reception by the United States, or its authorized agents, for other than military uses, (at any rate,) is not shown by any direct proof, but is inferred as presumption of law, from the facts stated. That these findings, as well as the original ones, do not justify the legal conclusion reached, will be shown more fully upon oral argument. The shortness of the time in which this brief is to be printed precludes that further statement of these points which we would prefer to make here, if we had the opportunity.

S. F. PHILLIPS,
Solicitor-General.
EDWIN B. SMITH,
Assistant Attorney-General.

In the Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 908.

THE UNITED STATES, APPELLANTS,

vs.

JOHN B. RAYMOND, ASSIGNEE IN BANKRUPTCY OF J. W. MAYBIN, APPELLEE.

APPEAL FROM THE COURT OF CLAIMS.

Statement of the Case.

Dr. J. W. Maybin filed his petition in the United States Court of Claims, at the December Term of said Court, 1867, for the proceeds of four hundred and two bales of cotton, owned by him, and stored upon his plantation, in the county of Warren and State of Mississippi; which cotton was seized from him by the military forces of the United States, and turned over to the Treasury Agents thereof; after which, four hundred bales of the same were sold, under the authority of the Government, and the proceeds of the sale thereof deposited in the United States Treasury. (The said Maybin having been adjudged a bankrupt, his claim aforesaid was afterwards represented by his Assignee in Bankruptcy, the aforesaid Raymond.)

FINDINGS OF FACTS.

The Court of Claims, in this case, made the following Findings of Facts:

1. That four hundred bales of said cotton were in the ownership of the said Maybin, on his plantation in Warren county, in the State of Mississippi, in the month of May or June, 1863:

(See page 13, and Exhibit Number 10, page 17.)

2. That said cotton was then and there seized by the military forces of the United States:

(See page 13.)

3. That the said cotton was the property of the said claimant:

(See page 13.)

4. That, after the said seizure of said cotton, the same was conveyed, in Army wagons, to Haynes' Bluff, where it was loaded on vessels on the river:

(See page 13.)

5. The said Court found further, that the cotton owned by the claimant, Maybin, constituted a part of the cotton received by the Treasury Agents at Vicksburg, and that it contributed to the fund set forth in the Commissioner's Report, which was part of the previous findings of said Court:

(See page of Supplemental Findings.)

6. That the cotton, so seized, was intermingled with other cotton belonging to other persons immediately after the capture thereof, and before its shipment, so that its *specific* identity was destroyed:

(See page of Supplemental Findings.)

7. That the proceeds of the sale of claimant's cotton do constitute a part of the fund accruing from the sales of the intermingled mass of cotton so shipped from Vicksburg, and afterwards sold at St. Louis and Cincinnati, the proceeds of which were deposited in the Treasury:

(See page of Supplemental Findings.)

FINDING OF LAW BY THE COURT OF CLAIMS.

From the above-stated Findings of Facts, the Court of Claims deduced the conclusion of law, that the claimant is entitled to judgment for four hundred bales of cotton at the average rate per bale, payable out of what is known as the First Fund, making for four hundred bales of cotton, at $177.50 per bale, the sum of $71,020.00.

POINTS IN ARGUMENT.

1. Claimant's possession and ownership of the cotton in controversy distinctly found by the Court of Claims, as an ultimate deduction from the evidence adduced.

2. Seizure of the same from plaintiff's possession alike clearly found.

3. The transportation of the said cotton to Vicksburg, its delivery there to Treasury agents of the Government, its subsequent sale, and the depositing of the proceeds of the said sale in the Treasury Department were found also to be established in proof, entitling plaintiff (the present appellee) to the sum of seventy-one thousand and twenty dollars. Upon this presentation of the case, there would seem to be no room for extended argument or copious adduction of authorities.

S. E. JENNER,
H. S. FOOTE,
Counsel for Appellee.

Supreme Court of the United States.

OCTOBER TERM, 1875.

No. 908.	THE UNITED STATES	*vs.* JOHN B. RAYMOND, *Assignee.*
No. 911.	SAME	*vs.* THOMAS KIDD.
No. 912.	SAME	*vs.* J. J. COWAN, *Adm'r.*
No. 913.	SAME	*vs.* J. B. BRABSTON.
No. 914.	SAME	*vs.* CHARLOTTE SPEAR.
No. 915.	SAME	*vs.* E. K. MCLEAN.
No. 916.	SAME	*vs.* J. REESE COOK.
No. 918.	SAME	*vs.* GEORGE HAWKINS.
No. 919.	SAME	*vs.* J. J. COWAN.

APPEALS FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLEES.

BY

JOSEPH CASEY.
Of Counsel.

Judd & Detweiler, Printers.

Supreme Court of the United States.

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No. 911. SAME *vs.* THOMAS KIDD.
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No. 913. SAME *vs.* J. B. BRABSTON.
No. 914. SAME *vs.* CHARLOTTE SPEAR.
No. 915. SAME *vs.* E. K. MCLEAN.
No. 916. SAME *vs.* J. REESE COOK.
No. 918. SAME *vs.* GEORGE HAWKINS.
No. 919. SAME *vs.* J. J. COWAN.

Appeals from the Court of Claims.

BRIEF OF APPELLEES.

Substantially these cases are dependent upon the same facts and principles. Two of the cases, Raymond, assignee, No. 908, and McLean, No. 915, present a slight shade of difference. The cotton having come from the Yazoo River.

The [illegible]of Thomas Kidd, No. 911, will fairly represent the general features of all the cases.

All of these cases are payable out of the first fund tabulated in Record No. 911, on pp. 14 and 15, with schedule No. 10, on p. 15.

The claimant resided on his plantation, lying immediately east of Big Black River, and on the Jackson and Vicksburg Railroad. It lay immediately in the line of the march of General Osterhaus' division, of General Grant's army, in its march on Vicksburg, in May, 1863. The railroad bridge over the Big Black River, is eleven or twelve miles east of Vicksburg, in the direction of Jackson. This division encamped for some time at this railroad bridge, while other divisions of the army were getting into positions to prosecute the siege. While lying there the officers and soldiers of General Osterhaus' division seized a large amount of cotton, and it was piled up in long rows near his headquarters. Among the rest he seized 500 bales from the claimant, Kidd, which he had raised, gathered, ginned and baled, on his plantation; and it was hauled to Gen. O's headquarters and piled up, intermingling it with the other cotton taken from various other persons.

In June, 1863, when General Osterhaus was ordered to advance, all the cotton gathered there was loaded on United States wagons, and carried forward with the advance of the division towards Vicksburg.

Most of this cotton was used as breast and counter works in prosecuting the siege, and it was there still farther intermingled. The city surrendered on the 4th of July, 1863. On the 14th of the same month, General McPherson, who was put in command of the city and its environs, issued an order directing the cotton used in the siege, on both sides, to be gathered up, and delivered over to the Treasury agent at Vicksburg. Some 2,700 bales were brought in from these works, and delivered to the agent, and by him forwarded and sold.

But this cotton, not only in its seizure, but in its use, its reclamation, and delivery to the agent was intermingled. Its exposure to the weather and its contact with the earth

necessarily obliterated the marks, so that it could not be distinguished. 5,078¼ bales of cotton were received by the agent at Vicksburg during the remainder of 1863, after the surrender, and 1864. Out of this number, but 617 were specifically traced, and 572 of these were the Elgee cotton—recently decided by this Court, and it was only traced, because the owner followed it up from place to place, until it was sold at St. Louis.

The schedule, on pages 14 and 15 of the Record, shows the receipt, shipment, &c., of the various lots.

The Record, on p. 3, says:

"1st. The first fund, consisting of Vicksburg and Natchez cotton, intermingled so that the identity thereof has been destroyed, as described in the report, will stand at the sum of $948,313.30. The number of bales contributed to this fund by capture, and which it represents, will stand at 5,341 bales, and the price per bale, which parties should recover, will stand at $177.55 per bale."

The explanation of the difference between this summary and the table, Exhibit No. 2, of first fund (Record, pages 14 and 15) is as follows: That shows that there was actually received, shipped, and sold from Vicksburg 5,078¼ bales, producing $1,516,050.66, or an average of $298.51 per bale. Out of this sum judgments were recovered in Court of Claims, and paid for 1,450 bales, aggregating $567,737.36, leaving the amount actually in the Treasury only, as above stated, $948,313.30 to meet bales proved now, 5,341, at $177.55 per bale.

This was a mistake of the commissioner. The number of bales allowed out of this fund was 4,965, instead of 5,341; but the mistake was in favor of the United States, and against the claimants, of $66,777.55.

These figures show a large deficit, both in bales and net proceeds. It is accounted for by Table No. 1, (pp. 12 and 13.) It appears from that and the other evidence in the

case, that the then Secretary of the Treasury and his agents usurped the functions and powers of the courts, and proceeded to adjudicate upon this captured and abandoned property and its proceeds. The evidence shows that out of this Vicksburg cotton, 846 bales in kind were released. These, at the average of the sales, $298.51 per bale, would have added to this first, or Vicksburg fund, the sum of $252,539.46. They also released in net proceeds $407,688.07, representing 1,497 bales, and that too, in both cases, without the shadow of right or authority; and, as is well known, most of the claims, both for cotton and proceeds, being frauds of the grossest and most barefaced kind.

In addition, there have been recoveries out of this fund in the Court of Claims and this Court of $567,739.36, representing 1,450 bales.

I. My first point is, THE UNITED STATES HAVE NO INTEREST IN THIS CONTROVERSY.

There were received at and shipped from Vicksburg and sold 5,078¼ bales, for the net sum of	$1,516,050 66
or $298.51 per bale.	
There were judgments had been recovered in Court of Claims, 1,450 bales	597,737 36
Balance remaining	$948,313 30

This was the proceeds of only 3,628¼ bales.

But the Commissioners' Report made 5,341 bales owned by private parties, payable out of this fund, reducing the *pro rata* per bale to them to but $177.55, instead of $298.51.

These cases had been referred to the Commissioner, so that the claims upon the fund could all be made at the same time, so that each could contest the other's claim, and the United States only pay the amount they had received.

Of the amount allowed upon the fund, judgments were rendered for 2,250 bales, as per Table No. 1	$399,487	50
Paid by United States.		
1,516 bales in appealed cases	269,165	80
1,199 still pending in Court of Claims, on proceedings	212,772	50
4,965 bales	$881,425	80

TABLE No. 1.

That there may be no mistake I will tabulate these cases paid by the United States:

Bales.			
50	John H. Newman	$9,055	05
19	Duff Green	3,373	45
40	E. B. Willis	7,102	00
118	A. Barwell	20,950	90
25	Thomas H. Jett	4,438	75
100	John R. McAlpine	17,755	00
64	Thomas Kidd, exr	11,363	20
130	Alexander Hutchinson	23,081	50
22	Thomas A. Marshall	3,906	10
30	John L. Hebron	5,326	50
125	John Willis	22,193	75
200	C. H. Harrison	35,510	00
40	A. W. Brien	7,102	00
18	Juliet Glass	3,195	90
6	R. Taylor	1,065	30
45	Mary P. Marye	7,989	75
100	Maria Ragsdale	17,755	00
300	Wm. E. Hall	53,265	00
21	J. R. Wade	3,728	55
116	Clarissa Young	20,595	80
75	B. Howard	13,316	25
42	J. A. Hutchinson	7,457	10
70	James Stewart	12,428	50
100	E. J. Jones	17,755	00
149	Thomas Y. Berry	26,454	95
114	James Meagher	27,010	85
55	F. A. Metcalf	6,158	35
75	Ann Eliza Routh	13,316	25
2,250	Bales, at $177.55	$399,487	50

TABLE No. 2.

Table of Cases appealed from first fund.

Bales.		
400	John B. Raymond, assignee	$71,020 00
480	Thomas Kidd	85,224 00
48	Cowan, Adm	8,522 40
32	J. B. Brabston	5,681 60
70	Charlotte Spear	12,428 50
21	E. R. McLean	3,728 55
40	J. Reese Cook	7,102 00
51	Ellen D. Batchelder	9,055 05
15	George Hawkins	2,663 25
120	J. J. Cowan	21,306 00
149	Robert G. Johnson	26,454 95
90	Hannah Bodenheim	15,979 50
1,516	Bales, at $177.55	$269,165 80

TABLE No. 3.

Cases still undetermined in Court of Claims, and which amounts are retained out of the fund, viz.:

Bales.		
714	Seth H. Kellogg	$126,670 70
235	Martha Crane	41,724 25
138	D. J. Dohan	24,491 95
112	Mary W. Thomas	19,885 60
1,199	at $177.55 per bale	$212,772 50

RECAPITULATION.

Whole amount of proceeds of captured cotton from Vicksburg remaining for distribution		$948,313 30
Paid out on judgments, as per Table No. 1		399,487 50
Balance still in Treasury		$548,825 80
Out of this sum these appeal cases, representing 1,516 bales, claim $177.55 per bale, as in Table No. 2	$269,165 80	

Cases in Table No. 3, still pending in Court of Claims, claim 1,199 bales, at $177.55	212,772 50	
		481,938 30
Left after paying all claims made on the fund		$66,887 50

Again: The judgments paid to claimants, as per Table No. 1, were abated in amount on account of these appealed cases, as follows:

2,250 bales, at $298.51	$671,647 50
2,250 bales, at $177.55	399,487 50
Taken from and relinquished by claimants in Table No. 1	$272,160 00
Whole amount claimed by appealed cases, as per Table No. 2	269,165 80
Balance	$2,994 20

The United States are estopped, conclusively, by this record, to deny our right to and interest in this fund.

THE FACTS OF THESE CASES AS THEY STAND ALONE, AS AGAINST THE UNITED STATES.

But, assuming this as a contest with the United States, in which they have an interest, do the facts as found by the Court of Claims, and certified upon the records, sustain the judgments in favor of these claimants?

I take, first, Thomas Kidd, No. 911. The Court finds:

1st. "The claimant owned and had in possession on his plantation in Hinds county, Mississippi, in May, 1863, five hundred bales of cotton, and the same was taken by the United States army and transported to the headquarters of General Osterhaus. Afterwards, in June, 1863, it was transported in army wagons, in charge of United States soldiers, towards Vicksburg." (Record, p. —.)

2d. "That the cotton owned by the claimant constituted a part of the cotton received by the Treasury agent at Vicksburg, and contributed to the fund set forth in the Commissioner's report, which forms a part of the findings of the Court."

3d. "The cotton so seized was intermingled with other cotton, belonging to other persons, immediately after capture and before shipment, so as to destroy the identity of the several lots; and the various shipments from different points were subsequently intermingled, in whole or in part, at Vicksburg, so that it is impossible to determine whether the cotton of any owner remained in a shipment from the original point or went into intermingled shipments from different points; and it is likewise impossible to ascertain the specific rate at which he should recover, except by throwing the whole into a common mass, as has been done in the report of the Commissioner, forming part of the previous findings of the Court."

4th. "The Court finds that the proceeds of the sales of the claimant's cotton do constitute a part of the fund found to be in the Treasury, accruing from the sales of the intermingled mass of cotton so shipped from Vicksburg, and sold at St. Louis and Cincinnati, more particularly set forth and described in the report of the Commissioner, which forms a part of the previous findings of this Court."

The first ultimate fact stated is the verbatim statement, as originally returned. The others are also the verbatim return of facts certified, in answer to the call and direction of this Court, stripped of the explanations which accompany the report, and which are mere surplusage, and constitute no part of the findings.

This Court ordered and directed the Court of Claims to certify these ultimate and final facts.

"1st. Whether the cotton owned by these respective laimants, and seized from them by the United States, did or did not constitute a part of the cotton delivered to and received by the Treasury agent of the United States at

Vicksburg, Mississippi, during the years 1863 and 1864, and whether or not the same was there intermingled with other cotton, belonging to other persons, so as to destroy the identity of the several lots belonging to the various persons from whom the same had been seized.

"2d. Whether the proceeds of the sales of the various lots of cotton, owned by and seized from the respective appellees in these cases, do or do not constitute a part of the fund found to be in the Treasury of the United States, accruing from the sales of the said intermingled mass of cotton, so shipped from Vicksburg, Mississippi, during said years 1863 and 1864, and which was sold at Cincinnati and St. Louis, for and on behalf of the United States."

Your Honors asked only to be informed and certified of the conclusion of facts arrived at by the Court of Claims—not the proofs or items of evidence by which the Court arrived at those conclusions; not whether the evidence was direct and positive, or circumstantial and presumptive; but what ultimate deductions, as to the points specified, did the Court of Claims draw from all the facts proved before them. Whether the inference, deductions, presumptions, and conclusions drawn by that Court are or are not justified by the evidence and the facts proved, cannot arise here, for your Honors could only judge of that intelligently and correctly by having all the evidence before you which the Court of Claims had when they found the facts and decided the cases; but this you have not, either in fact or substance, and it would be utterly incompatible with the duties of this Court, and impossible of performance, if it were not, to re-examine here the facts in the voluminous records of the Court of Claims. To obviate the necessity for this, and to compensate for it, Congress has provided that at any time within two years from the final disposition of a cause, the United States may move for a new trial in the Court of Claims, upon evidence cumulative or other that shows that any fraud, wrong, or injustice has been done to the United States.

If the Attorney General thinks that the Court of Claims is mistaken in the facts, here is full and ample scope to review them; and in view of the loud complaints that are made against the findings of the Court upon the facts by the United States, your Honors will, with us, doubtless consider it somewhat surprising that the United States have not availed themselves of this privilege, instead of these appeals.

In the newly certified facts, after some circumlocution and interjected explanations, we have direct and positive findings on every material point, and these direct and positive findings are not to be impaired or destroyed, by being connected with or following after, immaterial and irrelevant statements, not in any respect responsive to the order and direction of this Court.

I. Your Honors required the Court of Claims to certify whether the cotton owned by these claimants did or did not constitute a part of the cotton delivered to and received by the Treasury agent at Vicksburg, during the year 1863, *and the Court answers positively that it did constitute a part of the cotton so received.*

2. Whether or not it was there intermingled with other cotton, and its identity lost and destroyed.

The Court responds, it was so intermingled and its identity destroyed; and all of it so confused that it was necessary to throw it into a common mass or hotch-pot.

3. Whether the proceeds of the various claimants' cotton do or not constitute a part of the fund found to be in the Treasury, accruing from the sale of the mass of the cotton with which theirs had been intermingled.

The Court positively finds and affirms that the proceeds of the sales of claimants' cotton do constitute a part of the fund found to be in the Treasury, arising from the sales of this intermingled mass of Vicksburg cotton.

This case bears little more resemblance to the case of Crussell, (17 Wallace,) or that of Silvey, reported in 7 Court of Claims, 278, than it does to Shelley's case; and the utmost ingenuity will fail to trace either similarity of fact or principle. There, especially in the Silvey case, the ultimate facts found failed to trace the property into the hands of a Treasury agent, or any one whose duty it was to turn it over to such an agent. But here we show seizure by the military; then the cotton in the hands of a Treasury agent; then its shipment and sale; *and, finally, the proceeds are actually traced into the Treasury of the United States.*

The most rigid and exacting requirements ever held in any case, either by this Court or the Court of Claims, are fully and amply met by the findings of facts in these cases. But even on the principle of the Crussell and Silvey cases, these cases are impregnable. The principal military corps and divisions operating against Vicksburg were McPherson's, McClernand's, Logan's, Osterhous', &c. As the proofs in these cases showed all of these commanders, in approaching Vicksburg, gathered up what cotton lay in their track; and this doubtless under orders, or by concert, to be used as counter-works, in reducing the rebel fortifications of the place. When so seized or taken by the orders of the corps, or division, or brigade commander, it would necessarily be placed in the charge of the Quartermaster's Department. Organized and constituted as this army was, any other supposition or presumption would be absurd. The subsistence of the army would be presumed in charge of the Commissary Department. The ordnance and ordnance stores in charge of the officers of that branch of the service. The medicines and hospital stores in charge of the medical staff. To make any other presumptions assumes that it was a great, unorganized mob, instead of a systematic, effective, organized army.

To show, therefore, that it was seized by General Osterhaus, and piled up at his headquarters, means, that it was

in charge, and under the care of the chief quartermaster of his division, and such subordinates as he might charge with that duty.

When moved forward towards Vicksburg, it was still under the charge of these quartermasters. If placed in the works, it was doubtless under hasty orders given on the field, in the emergencies of assaults, or sorties, to cover advances, or repel assaults.

It is not to be presumed that when the surrender occurred, that this large amount of property was left waste and unprotected upon the scene of the late conflict. Like all other property and effects of an army, it would be in charge of the proper staff, with soldiers detailed to guard and protect it. On the 14th of July, only ten days after surrender, it was ordered into the city, into the custody of the Treasury agent, by General McPherson.

In the use to which it was put, a very few bales comparatively, would be destroyed. Cotton baled in India bagging with iron ties, compressed by steam or hydraulic power, is not easily destroyed by such use and handling.

Weighing from 450 to 600 pounds, a cotton bale is rather an inconvenient thing to steal, especially as there was not left even a mule or cart of private transportation in the region. It was a necessary consequence of the war, and notorious public history, that not a bale of cotton, or any other products, were transported either by land or water, except under the strictest military surveillance. To presume that this cotton was stolen from the works by private persons and shipped on their own account, pre-supposes—1st. That General Osterhaus and other officers abandoned it on the field without charging their quartermasters with the care. 2d. That the officers having control and care of the land and river transportation combined and conspired with the thieves who stole it. Because without that, to get it away was impossible.

But I submit again, that in order to raise the presumption

of the Crussell and Silvey cases, it was not necessary that it should be traced into the hands or custody of a quartermaster. Any and every other officer and soldier, was just as much bound to turn it over to the Treasury agent as a quartermaster. The 6th section, act of March 12, 1863, provides—

"That it shall be the duty of every officer or private of the regular or volunteer forces of the United States, or any officer, sailor, or marine in the naval service of the United States, upon the inland waters of the United States, who may take or receive any such abandoned property, or cotton, sugar, rice, or tobacco, from persons in such insurrectionary districts, or have it under his control, to turn the same over to an agent appointed as aforesaid, who shall give a receipt therefor; and in case he shall refuse or neglect so to do, he shall be tried by a court-martial, and shall be dismissed from the service, or, if an officer, reduced to the ranks, or suffer such other punishment as said court shall order, with the approval of the President of the United States."

So that the Court will see that the obligation to turn it over, and the penalty for neglect embraced all other officers as well as quartermasters, and all private soldiers as well.

JOHN B. RAYMOND, No. 908.

In this case, as in all the others, there were a great many facts and circumstances detailed in the evidence, from which the inferences and conclusions stated were drawn by the Court of Claims. Now, to determine whether the evidence justified the presumptions drawn or conclusions reached, the entire mass of evidence would have to be laid before this Court.

Haines Bluff is on the Yazoo river, some 30 or 40 miles by water, from Vicksburg; and the cotton of this claimant was part of the 1730 bales delivered over to the Treasury agent at Vicksburg, in July, 1863, by General Herron's expedition, as it was called. (See Record, p. 12, third paragraph; and see Table No. 1, p. 14.)

Then the additional findings in this case, like in the Kidd and other cases, meets every requirement of any law or decision ever enacted or made in these cases.

1st. That the claimant's cotton was received by the Treasury agent at Vicksburg.

2d. That by the Government officers it was there intermingled and confused with other cotton, so as to destroy its identity.

3d. That the proceeds of the sale of the claimant's cotton constitutes a part of the fund now in the Treasury, designated as the first or Vicksburg fund.

If the United States are dissatisfied with these findings, they can have them reviewed on a motion for a new trial, in the Court of Claims. But your Honors have not before you the means of determining whether these findings are or are not justified by the proofs; and that is the only point here.

II. It appears to me that if the United States desire to contest the authority and right of the Court of Claims to confer certain powers upon the Commissioner, they should have produced the order for his appointment. If this had been done, it would appear that the appointment had been made to ascertain facts and report them to the Court, leaving either party the right to dispute or controvert those facts; and so have them retried by the Court, as if no such report had been made.

Besides, it appeared in several cases that great injustice would be done both to the Government and claimants, by trying each of these causes separately, for each claimant would prove his whole case, and be entitled to recover the full value of all so proved. While the fact was apparent to the Court that through inevitable losses, releases, and great frauds and embezzlements, the funds in the Treasury were insufficient to pay all in full.

They did, therefore, what this Court expressly sanctioned in the Elgee case. They marshalled the different funds, and made the different and respective claimants come in and make their claim upon those funds, leaving the United States to resist any claim, and each of the claimants to contest that of any other to participate in these funds. The United States has gained largely in this way.

The McLean Case, No. 915.

The cotton in this case was taken from the claimant's plantation on the Yazoo river, by the Coates' expedition, in 1864. It was taken at the same time, and brought down on the same boat with that of Bodenheim, 924, and that of Johnson, 921.

In both of those cases, it is stated that the cotton was received at Vicksburg. In the Johnson case, that "said cotton was transported down the Yazoo river to Vicksburg, where it became intermingled with the mass of cotton collected at that point, and lost its identity."

In the Bodenheim case: "In the month of February, 1864, an expedition, under the command of Colonel James Coates, Eleventh Illinois infantry, seized ninety bales belonging to the said firm, which cotton was shipped to Vicksburg, where it was turned over to an assistant quartermaster of the army."

This was a part of the same lot, and the additional findings make the whole matter too clear for argument.

Upon all the grounds, then, I humbly submit these judgments should be affirmed.

1st. The United States have no such interest in the proceeds here in controversy, as entitles them to make the defence here set up.

2d. But if they have such interest, the findings of facts in all the cases, are conclusive of the respective claimants' right to recover the amount awarded them by the Court of Claims. And the judgments should be affirmed.

JOS. CASEY,
Of Counsel for Appellees.